

An appeal

- by -

Tara Kowalski  
("Employee")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C.113* (as amended)

**TRIBUNAL MEMBER:** Sheldon M. Seigel

**FILE No.:** 2007A/063

**DATE OF DECISION:** September 5, 2007

## DECISION

### SUBMISSIONS

Tara Kowalski

Ron Davidowicz, CFO

on behalf of Oceanic Trading Co. Ltd.

Ivy Hallam

on behalf of the Director

### OVERVIEW

1. This is an appeal brought by the Employee pursuant to Section 112 of the *Employment Standards Act (Act)* of a determination that was issued on June 18, 2007 by the Director. The determination found that the Employer had contravened sections 28 and 40 of the *Act* in respect of the employment of Tara Kowalski, and ordered the Employer to pay Ms. Kowalski the amount of \$1,444.72. This amount included overtime wages (s.40 of the *Act*), vacation pay (s.58 of the *Act*), and accrued interest (s.88 of the *Act*).
2. The Director also imposed administrative penalties on the Employer under Section 29(1) of the *Employment Standard Regulation* (the "*Regulation*") in the amount of \$1,000. The administrative penalties were for the contraventions of sections 28 and 40 of the *Act* in respect of the employment of Tara Kowalski
3. The Employee submitted that the Director erred by finding no bonus pay owing to the Employee, and by failing to find that the termination of the employee was wrongful (and motivated by retaliation for making a claim under Employment Standards). The Employee did not appeal the delegate's finding regarding overtime wages.
4. The Employee submitted that:
  - The Director erred in law.
  - The Director failed to observe the principles of natural justice in making the determination.
  - Evidence has become available that was not available at the time the Determination was being made.
5. The Employer requested an oral hearing. The Employment Standards Tribunal reviewed the appeal and the materials submitted with it, and decided an oral hearing was not necessary in order to decide this appeal.

### ISSUES

6. The issues in this appeal are:
  - Did the Director err in law in making the determination?
  - Did the Director fail to observe the principles of natural justice?
  - Did new evidence become available that was not available at the time the Determination was being made, and if so, does that new evidence affect the outcome of the determination?

## **ARGUMENT**

7. The Employee submitted a completed appeal form with five pages of appeal submissions, and twenty-three pages of evidence. She also submitted three pages of distinct submissions dated August 8, 2007.
8. The Employee's evidence consists of narrative authored by the Employee in the nature of mixed evidence and submissions, internal corporate correspondence, comparative corporate sales data, and a letter from a former employee of Oceanic Trading Co. Ltd.

## **THE FACTS AND ANALYSIS**

9. The Employee makes it clear that she is dissatisfied with the Determination. However, she provides no specific claims that address a specific error in law. The Employee also claims that the Director failed to observe the principles of natural justice, but the only reference to any alleged impropriety is the allegation that "four months is too long" with respect to the time required to render a decision. Finally, the Employee alleges that new evidence became available that was not available at the time the Determination was being made, but no indication of any such evidence is provided in her submissions or evidence.
10. On careful examination of the record and the Determination, I find that the Director did conduct an adequate and thorough investigation of this matter and properly weighed and assessed the evidence before her. I find that the record is clear with respect to the claims and evidence put forth by the parties, and that the Determination clearly sets out the Director's consideration of those claims and evidence and the careful evaluation and recounting of the evidence of the witnesses in that regard. I am satisfied by the text of the Determination that this process was done properly and I have no evidence before me that would cause me to disturb the results of that process.
11. I find there was no error in law.
12. I find that the passing of four months between investigation and publication of the determination, and nothing more, is not sufficient reason to support a finding of failure to observe the principles of natural justice.
13. I find that the Employee provided no new evidence that was unavailable at the time of the Determination such that the Determination should be revisited.

## **ORDER**

14. Pursuant to section 115 of the *Act*, I confirm the determination.

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**Sheldon M. Seigel**  
**Member**  
**Employment Standards Tribunal**