

An appeal

- by -

J.E. Palag Enterprises Inc. carrying on business as Jenny's Convenience Store  
(“Palag”)

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2014A/93

**DATE OF DECISION:** September 15, 2014

## DECISION

### SUBMISSIONS

Jennifer Palag on behalf of J.E. Palag Enterprises Inc. carrying on business as Jenny's Convenience Store

### OVERVIEW

1. On June 24, 2014, a delegate of the Director of Employment Standards (the “delegate”) issued a Determination against J.E. Palag Enterprises Inc. carrying on business as Jenny's Convenience Store (“Palag”) under section 79 of the *Employment Standards Act* (the “*Act*”) pursuant to which she ordered Palag to pay the total sum of \$2,290.13 on account of unpaid wages owed to a former employee and three \$500 administrative penalties.
2. Palag now appeals the Determination on the sole ground that the delegate failed to observe the principles of natural justice in making the Determination (subsection 112(1)(b)). In my view, this appeal has no reasonable prospect of succeeding and, accordingly, I am summarily dismissing this appeal under subsection 114(1)(f) of the *Act*. In reaching this conclusion, I have reviewed the record that was before the delegate, the delegate's “Reasons for the Determination” (the “delegate's reasons”) and Palag's written submissions filed in support of its appeal.

### BACKGROUND FACTS

3. Palag operates a convenience store known as “Jenny's Convenience Store” in Burnaby. Mr. Peng Shun (Tony) Zhao (“Mr. Zhao”) worked in the store as a clerk from August 10 to October 4, 2013 (when he quit). Mr. Zhao filed a complaint under section 74 of the *Act* alleging that he had not been paid at least the minimum wage for all hours worked and that he had not been paid overtime pay and vacation pay. The delegate investigated this complaint and ultimately determined that Palag had only paid \$9 per hour rather than the applicable \$10.25 per hour minimum wage and had not paid any overtime or vacation pay to Mr. Zhao.
4. The delegate issued a Determination in favour of Mr. Zhao for \$790.13 on account of unpaid wages, overtime pay, vacation pay and section 88 interest. In addition, the delegate levied three separate \$500 monetary penalties (see section 98) against Palag based on the latter's contraventions of sections 16 (failure to pay at least the minimum wage), 17 (failure to pay wages at least semimonthly) and 18 (failure to pay earned wages following termination of employment). Thus, the total amount payable under the Determination is \$2,290.13.
5. Palag only paid Mr. Zhao \$9 per hour and did not pay him any overtime pay or vacation pay. During the course of the delegate's investigation, Palag issued Mr. Zhao a cheque for additional pay but this cheque was returned “NSF” and was never replaced. Further, Palag failed to produce proper payroll records despite being requested to do so. Accordingly, the delegate relied, for the most part, on Mr. Zhao's records that she found “to be reasonable, credible and compelling given the details of his record and his statement regarding partial wages already received” (delegate's reasons, page R4).

## FINDINGS AND ANALYSIS

6. As noted earlier in these reasons, Palag appeals the Determination on the ground that the delegate failed to observe the principles of natural justice (subsection 112(1)(b)). Ms. Jennifer Palag (the company's sole director and officer) prepared a 1-¼ page letter, dated July 8, 2014, that she appended to Palag's Appeal Form. This document does not raise any credible natural justice argument. For example, there is no allegation of bias on the part of the delegate other than to suggest that the delegate should not have found against Palag and that it was not "fair" for Palag to have been found liable for any unpaid wages.
7. To a degree, the delegate's natural justice obligations toward Palag are codified in section 77 of the *Act* ("If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond") and the record before me clearly shows that Palag was given a fair and full opportunity to present its evidence and argument to the delegate. The record shows, among other things, the delegate first wrote to Palag on October 30, 2013, regarding Mr. Zhao's complaint; a mediation session was scheduled for November 22, 2013, but Palag never attended; the delegate then again wrote to Palag on January 16, 2014, providing a detailed calculation regarding Mr. Zhao's unpaid wage claim; and finally wrote to Palag on March 4, 2014, but Palag was not prepared to engage in any meaningful effort to resolve the complaint. Thus, the Determination was issued on June 24, 2014.
8. Ms. Palag's July 8 letter raises some other points, none of which is particularly salient. I shall briefly review her assertions. Ms. Palag says that Mr. Zhao was a "volunteer" – an assertion that is not supported by any evidence and which stands in marked contrast to the fact that Palag *actually paid* Mr. Zhao, albeit at a wage rate less than the minimum wage. The assertion that Mr. Zhao was a volunteer is patently absurd. Ms. Palag takes issue with Mr. Zhao's records regarding his hours worked but, at the same time, provides no proper payroll records of her own and, as noted above, the delegate concluded that Mr. Zhao's records were credible. Ms. Palag says that Mr. Zhao "agreed" to work for \$9 per hour (so much for her "volunteer" assertion) but whether he did or did not, the simple fact is that a non-union employer cannot lawfully "agree" with its employees that they will work for less than the minimum wage (see section 4). At a later point in her letter, Ms. Palag then reverses course and says that she is "owning" her "mistake" for not paying minimum wage but that the balance of the unpaid wage award (overtime, vacation pay and section 88 interest) is "irrelevant" but does not explain why that would be so. Finally, she says that her business is not doing well and has financial troubles but that is not a proper basis for setting aside the Determination. In sum, there is nothing in Ms. Palag's letter that raises any sort of *bona fide* issue with respect to the correctness of the Determination.

## ORDER

9. Pursuant to subsection 114(1)(f) of the *Act*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Determination is confirmed as issued in the amount of \$2,290.13 together with whatever further interest that has accrued under section 88 since the date of issuance.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**