

An appeal

- by -

0914942 B.C. Ltd.  
(the “Employer”)

- 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:** Shafik Bhalloo

**FILE No.:** 2017A/87

**DATE OF DECISION:** August 2, 2017

## DECISION

### SUBMISSIONS

Karan Multani

on behalf of 0914942 B.C. Ltd.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), 0914942 B.C. Ltd. (the “Employer”) has filed an appeal of the Determination issued by a delegate of the Director of Employment Standards (the “Director”) on May 19, 2017.
2. The Determination found that the Employer had contravened sections 18 (payment of all wages to an employee after employee terminates her employment) and section 28 (payroll records) of the *Act*.
3. Pursuant to section 29 of the *Employment Standards Regulation* (the “*Regulation*”), the Determination ordered the Employer to pay an administrative penalty in the amount of \$500.00 for a breach of each of the above sections of the *Act* for a total of \$1,000.00.
4. The Employer appeals the determination on the sole ground that the Director failed to observe principles of natural justice in making the Determination and seeks the Tribunal to cancel the Determination.
5. In correspondence dated June 28, 2017, the Tribunal notified the parties, among other things, that no submissions were being sought from any of them pending a review of the appeal by the Tribunal and that following such a review all, or part, of the appeal might be dismissed.
6. The section 112(5) “record” (the “Record”) was provided to the Tribunal by the Director on July 4, 2017, and a copy of the Record was delivered to the Employer, who was given the opportunity to object to its completeness. The Employer did not file an objection and, accordingly, the Tribunal accepts it as complete.
7. I have decided that this appeal is an appropriate case for consideration under section 114 of the *Act*. At this stage, I will assess the appeal based solely on the Determination, the Appeal and written submissions of the Employer and my review of the Record that was before the Director when the Determination was being made. Under section 114(1) of the *Act*, the Tribunal has the discretion to dismiss all or part of the appeal without a hearing of any kind, for any of the reasons listed in that subsection. If satisfied, the appeal or part of it has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, the Director will be invited to file further submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1) of the *Act*, it will be dismissed.

### ISSUE

8. The issue to be considered at this stage of the proceeding is whether there is any reasonable prospect that the Employer’s appeal can succeed.

### THE FACTS

9. The Employer is a company duly incorporated under the laws of British Columbia.

10. A BC Online: Registrar of Companies — Corporation Search conducted by the delegate of the director on May 5, 2017, indicates that it was incorporated on July 7, 2011.
11. Karan Singh Multani (“Mr. Multani”) is listed as its sole director.
12. The Employer is a Farm Labour Contractor and operates under a license issued by the Director under section 7 of the *Regulation* for a period from July 3, 2016, to July 2, 2019.
13. The facts relating to the appeal as found by the delegate in the Reasons for the Determination are as follows:
  - a. On April 26, 2017, Sarbjit Kaur Thandi (“Ms. Thandi”) filed a complaint under the *Act* claiming she was owed wages by her employer (the “Complaint”).
  - b. Ms. Thandi worked as a nursery worker on November 22 and 23, 2016, at a rate of pay of \$10.85 per hour and is owed \$184.45 in wages.
  - c. Ms. Thandi said, on her first day of work, she fell and injured herself.
  - d. She attempted to inform a supervisor at work, but no supervisor was available.
  - e. On her second and final day of work, the pain from her injury had not subsided and her supervisor told her that the “lady in charge of first aid or injury complaints was unavailable”.
  - f. During the investigation of the Complaint, Ms. Thandi confirmed that she did not return to work after November 23, 2016, because she was injured at work.
  - g. In the Complaint form, Ms. Thandi states she quit her employment.
  - h. Ms. Thandi was unsure who her employer was but the delegate contacted Mr. Multani on May 4, 2017, during his investigation of the Complaint, and the latter confirmed that Ms. Thandi was employed by his company, the Employer.
  - i. Mr. Multani also confirmed to the delegate that the Employer owed wages to Ms. Thandi and did not dispute her wage claim.
  - j. Mr. Multani, however, explained to the delegate that Ms. Thandi’s employment was very brief and that she only worked for two days. She never submitted her address, contact phone number, or social insurance number to the Employer. Therefore, the Employer could not add her to its payroll system and was unable to pay her.
  - k. The Employer kept no records of Ms. Thandi’s contact information.
  - l. On May 4, 2017, Mr. Multani spoke to Ms. Thandi’s daughter and obtained payroll information for Ms. Thandi. As a result, the Employer was now prepared to pay Ms. Thandi’s wages.
  - m. On May 5, 2017 Mr. Multani personally delivered a cheque to the Langley office of the Employment Standards Branch (“the Branch”) for Ms. Thandi in the amount of \$184.45 gross regular wages plus \$7.38 in vacation pay for a total of \$191.83.
  - n. As a part of the Farm labour Licensing process and pursuant to section 5(2) of the *Regulation*, applicants are required to pass a written examination in order to satisfy the Director of their knowledge of the *Act* and *Regulation*.
  - o. Applicants are also taken through an interview checklist to ensure their understanding of the requirements of the *Act* and *Regulation* including the requirements regarding payment of wages and keeping payroll records.

- p. Mr. Multani successfully completed the examination and the Employer, therefore, fulfilled the licensing requirements.
- q. Mr. Multani stated to the delegate that he was aware of the requirement in section 19 of the *Act* that employers must forward to the Director all outstanding wages owing to any employee that they are not able to locate within 60 days of the date the wages should have been paid.
- r. Mr. Multani said that since the Employer in this case did not have Ms. Thandi's address or Social insurance Number prior to May 4, 2017, the Employer could not add her to its payroll System in order to send her payment to the Director.
- s. On May 9, 2017 Ms. Thandi attended the Branch to pick up her cheque.
- t. In finding that the Employer contravened section 18 of the *Act* in respect of the employment of Ms. Thandi, the delegate reasoned as follows:

0914942 B.C. Ltd. has been a licensed FLC since July 4, 2012, and is well aware of the requirements under the Act for paying employees and keeping proper payroll records. Though the Employer finally paid Ms. Thandi's wages, it took almost six months to do so, and only after she had filed a complaint with the Director.

Section 18 of the Act establishes time limits for paying outstanding wages when employment ends. When an employee quits, an employer must pay all wages owing to the employee within six calendar days after the last working day or the date the employee quit, whichever is later. The Employer, therefore, had until November 29, 2016 to pay Ms. Thandi all wages owed to her for her two days of employment.

The Employer did not submit a cheque to the Director to pay Ms. Thandi until May 5, 2017. Ms. Thandi actually received the wages on May 9, 2017.

By paying Ms. Thandi her wages well beyond the timeline required by section 18 of the Act, I find that 0914942 B.C. Ltd. contravened section 18 of the Act and I impose a mandatory administrative penalty in the amount of \$500.00 for the contravention. The contravention date is November 30, 2016, which is the day after the last day that all outstanding wages should have been paid to Ms. Thandi.

- u. In finding that the Employer contravened section 28 of the *Act* for failing to keep proper payroll records pertaining to Ms. Thandi, the delegate stated:

Section 28 of the Act requires that for each employee, an employer must keep records of, among other things, the employee's name, date of birth, occupation, telephone number and residential address.

Mr. Multani admitted, and I find, that the Employer did not obtain Ms. Thandi's telephone number or residential address before or during her employment. Mr. Multani used this lack of record-keeping as an excuse for not paying her wages on time, stating that Ms. Thandi never submitted payroll documents to the Employer. It was not until May 4, 2017 that the Employer received Ms. Thandi's payroll information from her daughter. It is unfortunate that the Employer did not obtain this information from Ms. Thandi while she was employed.

For its failure to keep payroll records for Ms. Thandi at the time she was employed, or, at the latest, within six days after she quit her employment, I find that 0914942 B.C. Ltd. contravened section 28 of the Act on November 30, 2016, which is the day after the last day that all outstanding wages should have been paid to Ms. Thandi. I impose a mandatory administrative penalty in the amount of \$500.00 for the contravention.

## SUBMISSIONS OF THE EMPLOYER

14. In his written submissions on behalf of the Employer, Mr. Multani states:
- a. Ms. Thandi was not paid her wages on time because when she was asked by the Employer to provide the “required information”. Ms. Thandi failed to do so because she had not previously worked for the Employer and did not trust the Employer with her “information like bank account and SIN numbers”.
  - b. Ms. Thandi said she would give the required information at work when she attended but then only provided her “ID” to the supervisor and “thought that’s all she needed to do”.
  - c. The Employer asked Ms. Thandi “that evening” to provide the required information but “she was frustrated... and did not want to give it over the phone.
  - d. On the second and final day when Ms. Thandi attended at work, she did not give the required information and she did not want to continue to work.
  - e. The Employer “tried to contact [Ms. Thandi] many time[s] to get her information so she can be paid on time but there was no response from [her]...”.
  - f. The Employer wants to “pay all employees on time and in a reasonable and professional manner”. The Employer has no desire to “ruin [its] name in this business” or have a determination against it for such small amount.
  - g. When he discovered that Ms. Thandi had contacted the Branch he took the matter in his own hands “to ensure the employee was paid on [time]”.
  - h. Ms. Thandi was paid “[t]he total amount” and there is “no reason for this contravention”. The Employer does “not want a bad record”

## ANALYSIS

15. Section 112(1) of the *Act* provides that a person may appeal the determination on the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination; and
  - (c) evidence has become available that was not available at the time the determination was being made.
16. The burden is on the appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds listed in section 112(1) above.
17. The Employer’s appeal is based on the “natural justice” ground of appeal in section 112(1)(b).
18. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal explained the principles of natural justice as follows:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion.

Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party. (see *BWT Business World Incorporated*, BC EST # D050/96)

19. I find nothing in the appeal submissions that remotely suggests a breach of natural justice on the part of the Director in making the Determination. More particularly, there is no allegation by the Employer or any suggestion in the appeal submissions that the Employer was denied an opportunity to know the case against it; to present its evidence; or was not heard by an independent decision maker. There is, however, ample evidence in the Record and, in particular, in the delegate's notes in the investigation that indicate that the Employer was aware of the Complaint and participated in the investigation of it by the delegate. In particular, the delegate communicated with the Employer's principal and sole director, Mr. Multani, on at least two occasions during the investigation process and the latter communicated the evidence and position of the Employer before the delegate made the Determination. In the result, I find that the allegation of breach of natural justice advanced by the Employer is unsupported in the evidence and I dismiss this ground of appeal.
20. I do find that the Employer is employing the appeal process to make further or new submissions adding to or embellishing the submissions Mr. Multani already made in the investigation of the Complaint. I note the appeal is not an opportunity for a party to make new arguments or embellish arguments previously made during the investigation. I also add that there is nothing in the appeal submissions of Mr. Multani or the Employer that would qualify as "new evidence" under the fourfold test for admitting new evidence in *Re: Merilus Technologies Inc.*, BC EST # D171/03. More particularly, there is nothing in the submissions of Mr. Multani that could not, with the exercise of due diligence, have been discovered and presented to the delegate during the investigation of the complaint and prior to the Determination being made. I also do not find anything in the submissions of Mr. Multani to have high potential probative value, in the sense that, if believed, it could, on its own or when considered with other evidence, have led the delegate to a different conclusion on the material issue.
21. Having said this, I find the decisions of the delegate in the determination to be amply supported in the Employer's own evidence. The Employer admitted to having not paid Ms. Thandi's wages until May 5, 2017, which is indeed well beyond the timeline required by section 18. The Employer also admitted to not having the records required for Ms. Thandi under section 28 of the *Act*. I find there is no basis for the Tribunal to interfere with the Determination.
22. In the circumstances, I find there is no reasonable prospect that this appeal can succeed and I dismiss it.

## **ORDER**

23. Pursuant to section 115 of the *Act*, I confirm the Determination issued on May 19, 2017, and I dismiss this appeal pursuant to section 114(1)(f) of the *Act*.

---

**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**