

An appeal

- by -

C and C Taxi Inc. carrying on business as Mayfair Taxi  
(“C and C Taxi”)

- 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:** David B. Stevenson

**FILE No.:** 2013A/39

**DATE OF DECISION:** November 1, 2013

## DECISION

### SUBMISSIONS

Sarabjit S. Nagra	on behalf of C and C Taxi Inc. carrying on business as Mayfair Taxi
Tami L. Wilson	on behalf of the Director of Employment Standards

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) C and C Taxi Inc. carrying on business as Mayfair Taxi (“C and C Taxi”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on April 24, 2013.
2. The Determination concluded that C and C Taxi had contravened Part 3, section 18, Part 7, section 58 and Part 8, section 63 of the *Act* in respect of the employment of Jean Pierre Fournier (“Fournier”) and ordered C and C Taxi to pay to Fournier wages and interest in the amount of \$5,399.83 and to pay administrative penalties in the amount of \$1,000.00. The total amount of the Determination is \$6,399.83
3. In this appeal, C and C Taxi alleges the Director erred in law and failed to observe principles of natural justice in making the Determination. C and C Taxi seeks to have the Determination cancelled.
4. This appeal was initially assigned for consideration under section 114 of the *Act*. After assessing the arguments made in the appeal, I determined it was appropriate to have the positions of all of the parties on the issues raised. Accordingly, I requested responses to the appeal from the Director and from Fournier. I received a response from the Director. I received no response from Fournier. I have also received a final reply from C and C Taxi to the response of the Director.
5. I now have before me the Appeal Form and the appeal submissions provided by C and C Taxi, the Determination, the reasons for the Determination, the section 112(5) “record” provided by the Director, the submissions made by the Director and the final response filed by C and C Taxi. The “record” has been provided to C and C Taxi, who has indicated parts of that “record” are missing. I shall comment briefly on this point later in the decision.
6. The Tribunal has discretion to choose the type of hearing for deciding an appeal. Appeals to the Tribunal are not *de novo* hearings and the statutory grounds of appeal are narrow in scope. The Tribunal is not required to hold an oral appeal hearing and may choose to hold any combination of oral, electronic or written submission hearing: see section 103 of the *Act* and section 36 of the *Administrative Tribunals Act*. The Tribunal finds this appeal can be decided from the Determination, the written submissions on behalf of the parties and the material on the section 112(5) “record”, together with any additional evidence allowed by the Tribunal to be added to the “record”.

### ISSUE

7. The issue in this appeal is whether the Director erred in law or failed to observe principles of natural justice in making the Determination.

## THE FACTS

8. The following summary of facts is based on the Determination.
9. C and C Taxi is a taxi company. Fournier was employed by C and C Taxi as a taxi driver from May 6, 2006, to June 1, 2012, when his employment was terminated by C and C Taxi. Fournier provided the Director with copies of his daily trip sheets. The Director found the records provided confirmed the amounts paid to Fournier on a daily basis and his hours worked each day. Fournier also provided the Director with a month by month summary of the wages he claimed were unpaid and outstanding.
10. Fournier said, and the Director accepted, he had been terminated by C and C Taxi on June 1, 2012, without notice and without compensation for length of service. Fournier also said, and the Director accepted, he was owed and not paid annual vacation pay at termination.
11. The Determination indicates the Director attempted to contact C and C Taxi by telephone prior to November 29, 2012, on which date a letter was sent from the Director to C and C Taxi advising them of Fournier's complaint, seeking a response to the complaint and inviting a representative of C and C Taxi to communicate with the Director. The letter also attached a Demand for Records, issued pursuant to section 85 of the *Act*, highlighting the deadline for submitting the demanded records, December 20, 2012, the consequences of failing to meet the Demand deadline, the potential consequences of failing to participate in the complaint investigation and the administrative penalty scheme under the *Act*.
12. The letter and the Demand were sent to the operating address of C and C Taxi and to its registered and records office. Copies were also sent to all of its recorded directors and officers. There was no response to the letter or the Demand from C and C Taxi or any of its directors or officers. On January 3, 2013, the Director sent another letter to C and C Taxi, once again copying all of its recorded directors and officers. The letter noted the absence of any response to the previous letter and imposed a deadline of January 18, 2013, for C and C Taxi to reply.
13. On January 14, 2013, the Director received a facsimile communication from one of the directors/officers of C and C Taxi, Sarabjit Singh Nagra, indicating he had just become aware of the matter, had been out of the country since November 2012 and was at that time in India due to a severe chronic medical condition. The communication indicated he expected to return to the province in April 2013 and requested an extension to that time to deal with the matter. Sarabjit Singh Nagra provided an e-mail address at which he could be contacted.
14. The Director responded to the requested delay on January 22, 2013, noting a search of the corporate records listed several directors/officers for C and C Taxi and urging Sarabjit Singh Nagra to engage one of them to provide a response on behalf of the company and to deliver the company's records for Fournier. The Director agreed to extend the time to respond to February 15, 2013. The communication was sent to the e-mail address provided by Sarabjit Singh Nagra.
15. There was no response to the January 22, 2013, communication. On March 12, 2013, the Director prepared a letter addressed to all of the directors/officers of C and C Taxi, including Sarabjit Singh Nagra, advising all of them that a response to the complaint was needed and that if no response was received by March 28, 2013, a Determination could be issued solely on the information provided by Fournier. The letter was sent to Sarabjit Singh Nagra at the e-mail address he had provided and to the other director/officers of C and C Taxi by registered mail.

16. The Determination states, at page R4, that despite all of the above, “no records or response was provided by [C and C Taxi, Sarabjit Singh Nagra or any other director/officer of C and C Taxi] to the particulars of the complaint”.
17. That statement is at issue in this appeal.

## ARGUMENT

18. C and C Taxi makes several arguments against the Determination. I will summarize each of them in the order they appear in the appeal submission filed with the Tribunal on June 3, 2012.
19. First, C and C Taxi submits the Director failed to do a proper investigation of the facts, particularly as it related to the employment status of Fournier, and as a result erred in law in treating him as an employee for the purposes of the *Act*. C and C Taxi submits Fournier was not an employee, but an “owner-operator”.
20. Second, C and C Taxi says the Director failed to observe principles of natural justice by refusing the extension of time to allow Sarabjit Singh Nagra to respond to the complaint and by failing to consider evidence provided by C and C Taxi during the complaint process. This latter submission requires some further explanation.
21. Sarabjit Singh Nagra, who has filed the appeal for C and C Taxi, asserts he had several documents delivered to the Victoria Employment Standards Branch office on March 22, 2013, but these documents appear not to have been considered by the Director when issuing the Determination. There are six documents identified in this argument: two ICBC certificates of insurance and vehicle registration, one issued in February 2011 and another issued in February 2012, identifying Fournier as the “principal operator” of the insured vehicle – described as a “TAXI” on the documents; a November 23, 2012, letter from adjusters for ICBC to Fournier asking him to cooperate in the investigation of an accident; an ICBC document outlining insurance coverage for a vehicle owned by C and C Taxi; a lease agreement for a taxi between C and C Taxi, the “Lessor”, and Fournier, the “Lessee”, covering a period from January 1, 2010, to December 31, 2012; and the January 14, 2013, letter from Sarabjit Singh Nagra to the Director. Sarabjit Singh Nagra argues that if the Director had considered the six documents, the decision to give Fournier wages could not have been made.
22. I shall address these documents later in this decision, but note here that the last document identified is included in the section 112(5) “record”.
23. On June 10, 2013, Sarabjit Singh Nagra filed a second, and expanded, appeal submission. The relevance of this date is that it falls outside of the statutory time period for filing an appeal. No request to extend the appeal period has been filed. The submission repeats many of the arguments contained in the timely appeal submission, but also adds new arguments and contains several assertions of fact that were never made to the Director during the complaint investigation process. C and C Taxi has not grounded this appeal in new facts becoming available that were not available when the Determination was being made. The expanded appeal also includes a signed, unsworn, statement from Rajdeep Singh Bajwa, saying he was the person who delivered the six documents to the Victoria Employment Standards Branch office on March 22, 2013. The six documents are attached to the statement.
24. On August 9, 2013, C and C Taxi filed two affidavits sworn August 8, 2013, one by Rajdeep Singh Bajwa and the other by Mohamed (Mike) Mouait. The former attests to the same information and exhibits the same attachments as the statement referred to above. The latter states he accompanied Rajdeep Singh Bajwa to deliver the six documents to the Victoria Employment Standards Branch office, that he personally checked

the documents that were placed in an envelope and delivered and exhibits those documents. These affidavits were filed well after the expiry of the appeal period.

25. The Director's response to the appeal includes a submission filed August 29, 2013, and attaches a submission filed with the Tribunal on July 25, 2013, in reply to an objection by C and C Taxi to parts of the section 112(5) "record".
26. In the response, the Director says she did not receive the documents alleged to have been delivered to the Victoria Employment Standards Branch office on March 22, 2013. The Director submits C and C Taxi was given many opportunities and extensions to provide records and a response to the complaint, but did not do so. The Director notes the first substantive response from C and C Taxi was in its correspondence, dated June 7, 2013, to the Tribunal; there was no substantive response included with the documents said to have been delivered March 22, 2013. The Director submits this is a case where the principles set out in *Tri-West Tractor Ltd.*, BC EST # D268/96, *Harjinder Singh Gill*, BC EST # D050/97, and *Kaiser Stables Ltd.*, BC EST # D058/97, should be applied to deny C and C Taxi the chance to provide evidence and argument on appeal that it failed to provide during the investigation, despite all of the attempts by the Director to have them do so.
27. As indicated above, Fournier has not provided a response, although he was invited to do so.
28. C and C Taxi has filed a final reply, which does no more than disagree with some of the assertions made in the Director's response and re-assert its appeal position.

## ANALYSIS

29. I will respond to each of the arguments raised by C and C Taxi in order.
30. I do not accept the argument that the Director failed to do a proper investigation of the complaint. The matters about which C and C Taxi complains were the result of their own failure to respond in a timely way (and on some matters, not to respond at all) to the Director's numerous requests for their response to Fournier's claims and for records. I also reject the argument that the Director, based on the material before her when the Determination was made, erred in law in treating Fournier as an employee of C and C Taxi.
31. C and C Taxi argues the Director failed to observe principles of natural justice by not providing the requested extensions of time to respond to the complaint and by failing to consider evidence provided during the complaint process. In advancing this argument, C and C Taxi is required to provide some evidence to support their argument: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.
32. I dismiss the first part of this argument. In my view, the Director was both gracious and patient in dealing with Sarabjit Singh Nagra, which I do not find was reciprocated by him.
33. The second part of the argument, however, gives me cause for concern and has led me to find the Determination must be set aside and the matter referred back to the Director. I must accept the assertion that the six documents identified in the statements relating to them and in the affidavits filed with the Tribunal were delivered to the Victoria Employment Standards Branch office on March 22, 2013 – six days before the final deadline imposed by the Director for submitting a response. The documents delivered comprised what I would view to be a "large red flag" concerning the status of Fournier under the *Act*. I accept the documents were not seen by the Director before making the Determination and place no responsibility on her for the apparent failure of these documents to find their way into the section 112(5)

“record” or to have been considered before the Determination was issued. The error appears to be an “institutional” one: the documents were delivered to the Victoria Employment Standards Branch office but were somehow lost in the system. How that may have occurred is not as important as that it did.

34. I find this failure to be a breach of natural justice.
35. I appreciate that the statement and affidavits relating to the delivery of the six documents have been filed in a slipshod and untimely manner. However, the Tribunal has not considered it appropriate to strictly apply the rules and procedures to such matters where they go to ensuring compliance with principles of natural justice and procedural fairness: see *J.C. Creations Ltd. o/a Heavenly Bodies Sports*, BC EST # RD317/03, at pages 14-15.
36. The appeal succeeds.

### **ORDER**

37. Pursuant to section 115 of the *Act*, I order the Determination dated April 24, 2013, be cancelled and the matter referred back to the Director.

---

**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**