

An appeal

- by -

Rabab Indian Restaurant Ltd.  
(“Rabab”)

- 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.:** 2016A/60

**DATE OF DECISION:** June 16, 2016

## DECISION

### SUBMISSIONS

Roopreet Sohal

on behalf of Rabab Indian Restaurant Ltd.

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Rabab Indian Restaurant Ltd. (“Rabab”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 31, 2016.
2. The Determination found Rabab had contravened Part 3, sections 17 and 18, Part 5, section 46, Part 7, section 58 of the *Act* and section 46 of the *Employment Standards Regulation* (the “*Regulation*”) in respect of the employment of Charan Singh Kang (“Mr. Kang”) and ordered Rabab to pay Mr. Kang wages in the amount of \$1,027.06 and to pay administrative penalties in the amount of \$1,500.00. The total amount of the Determination is \$2,527.06.
3. This appeal alleges the Director failed to observe principles of natural justice in making the Determination. Rabab seeks to have the Determination cancelled.
4. In correspondence dated May 10, 2016, the Tribunal notified the parties, among other things, that no submissions were being sought from any other party pending a review of the appeal by the Tribunal and, following such review, all or part of the appeal might be dismissed.
5. The section 112(5) record (the “record”) has been provided to the Tribunal by the Director and a copy has been delivered to Rabab. They have been provided with the opportunity to object to its completeness. No objection to the completeness of the record has been received and, accordingly, the Tribunal accepts it as being complete.
6. I have decided this appeal is appropriate for consideration under section 114 of the *Act*. At this stage, I am assessing the appeal based solely on the Determination, the reasons for Determination, the appeal, the written submission filed with the appeal and my review of the material that was before the Director when the Determination was being made. Under section 114(1) of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in the subsection, which reads:

114 (1) *At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of any appeal if the tribunal determines that any of the following apply:*

- (a) *the appeal is not within the jurisdiction of the tribunal;*
- (b) *the appeal was not filed within the applicable time limit;*
- (c) *the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;*
- (d) *the appeal was made in bad faith or filed for an improper purpose or motive;*
- (e) *the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;*
- (f) *there is no reasonable prospect that the appeal will succeed;*
- (g) *the substance of the appeal has been appropriately dealt with in another proceeding;*

(b) *one or more of the requirements of section 112(2) have not been met.*

7. If satisfied the appeal or a part of it should not be dismissed under section 114(1) of the *Act*, the Director and Mr. Kang will be invited to file submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1), it is liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeal will succeed.

## ISSUE

8. The issue is whether this appeal should be allowed to proceed or be dismissed under section 114(1) of the *Act*.

## THE FACTS

9. Rabab is a restaurant operating in Mission, BC. Mr. Kang was employed as a cook from July 2014 to August 15, 2014. Mr. Kang filed a complaint with the Director alleging he had not been paid wages he had earned between August 3 and August 15, 2014.
10. The Director conducted a complaint hearing. Mr. Kang attended on his own behalf. Rabab was represented by Anveet Sohal (“Mr. Sohal”), the manager of the restaurant.
11. The Director allowed each of the parties to present their case and to answer the other party’s position.
12. The principal issue in the hearing was whether Mr. Kang had worked during the period for which he claimed wages. The Director, based on evidence provided by both Mr. Kang and Mr. Sohal, found he had. In respect of this finding, the Determination relates the evidence of Mr. Sohal to the effect that, although Mr. Kang was “terminated” by Rabab on August 2, 2014, he was “allowed” to work from August 3 to August 15, 2014.
13. The Director also found Mr. Kang had not been paid for working this period, was entitled to wages for this period and to statutory holiday pay for the BC Day statutory holiday. Mr. Kang was awarded wages in the amount set out in the Determination. This amount included concomitant annual vacation pay on the unpaid wages and interest under section 88 of the *Act*.
14. The Director imposed administrative penalties for the contraventions of the *Act* and the *Regulation* Rabab was found in the Determination to have committed.

## ARGUMENT

15. The appeal has been filed on behalf of Rabab by Rooppreet Sohal, who is listed in corporate records as the sole director of Rabab. Rooppreet Sohal did not participate in the complaint hearing.
16. Rabab submits the Determination is unjust and disputes the Director’s finding that Mr. Kang worked at the restaurant from August 3 to August 15, 2014. The appeal submission states Mr. Kang “has not worked within my business during those dates. Mr. Kang had been terminated from his position at Rabab on August 2<sup>nd</sup> due to improper conduct at the work force.” The appeal seeks to discount the evidence given by Mr. Sohal because he “is not responsible for the accounting component of the business” and “not fully aware of what and when Mr. Kang was being paid”.

17. Rabab argues no wages were owing to Mr. Kang and consequently there was no contravention of sections 17 and 18 of the *Act*. Rabab questions why a section 17 violation would be found if “the employee himself prefers and accepts a salary on a monthly basis”. Based on the same assertion, Rabab submits no interest would be paid on wages that are not owed.

## ANALYSIS

18. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *Act*, which says:

112 (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*

- (a) *the director erred in law;*
- (b) *the director failed to observe the principles of natural justice in making the determination;*
- (c) *evidence has become available that was not available at the time the determination was being made.*

19. A review of decisions of the Tribunal reveals certain principles applicable to appeals that have consistently been applied. The following principles bear on the analysis and result of this appeal.

20. An appeal is not simply another opportunity to argue the merits of a claim to another decision maker. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the Determination under one of the statutory grounds. A party alleging a failure to comply with principles of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.

21. The grounds of appeal listed above do not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals which seek to have the Tribunal reach a different factual conclusion than was made by the Director unless the Director’s findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03.

22. Rabab has grounded this appeal in a failure by the Director to observe principles of natural justice in making the Determination.

23. While the appeal submission does not relate any specific aspect of the complaint process to this ground of appeal, in context, it can only apply to how the Director administered the complaint and the complaint hearing.

24. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal has briefly summarized the natural justice concerns that typically operate in the context of the complaint process:

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)

25. There are no different or additional concerns that arise in this case and absolutely no evidence provided in the appeal that would support the natural justice ground. The arguments made by Rabab in their appeal submission, while disputing findings made in the Determination, are devoid of any analysis that might identify natural justice or fair hearing concerns in the process applied by the Director to administer Mr. Kang's complaint. I am not persuaded the Director failed to provide Rabab with the procedural rights captured within the above statement.
26. Rabab has done nothing more in this appeal than challenge findings of fact made in the Determination without showing there was any error made in respect of the challenged findings. The arguments made against the findings, which suggest they were based on evidence provided by Mr. Kang, ignores the evidence given by Mr. Sohal and recorded in the Determination that Mr. Kang did work the days in August that he claimed to have worked. In other words, the challenged finding of fact was firmly grounded in the evidence provided at the complaint hearing by both parties. Rabab cannot resile from or challenge that evidence in this appeal.
27. As noted above, the Tribunal must in any event defer to findings of fact made in a Determination unless such findings raise an error of law. There is no error of law argued – this ground of appeal is not raised – nor is there any error of law apparent in the findings made. Rabab is doing nothing more in this appeal than seeking to have the Tribunal ignore evidence that was provided to the Director and alter findings made in the Determination based, at least in part, on that evidence. There is no legal basis shown in the appeal for the Tribunal to do this.
28. Since there is no error found in the Determination, there is no reason to find the administrative penalties imposed by the Director for the contraventions of the *Act* found to have been committed by Rabab were inappropriate and should be cancelled. The administrative penalty scheme, generally, is in accordance with the purposes of the *Act*, is not subject to fairness considerations and is mandatory when the statutory preconditions for imposing the administrative penalties are met, which they were in this case.
29. On the question of interest, and while the argument against adding interest to the amount of wages found to be owing to Mr. Kang is moot as the argument to cancel the wage award has no merit, I will note that section 88 of the *Act* requires interest be added to the wages awarded in a Determination.
30. I find this appeal has no reasonable prospect of succeeding. The appeal on its face is devoid of merit. The purposes and objects of the *Act* are not served by requiring the other parties to respond to it.
31. The appeal is dismissed under section 114(1)(f) of the *Act*.

## ORDER

32. Pursuant to section 115 of the *Act*, I order the Determination dated March 31, 2016, be confirmed in the amount of \$2,527.06, together with any interest that has accrued under section 88 of the *Act*.

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