Employment Standards TRIBUNAL

An appeal

- by -

Ocean Pointe Realty Ltd.,
carrying on business as Re/Max Ocean Pointe Realty
("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: Robert E. Groves

FILE No.: 2011A/78

DATE OF DECISION: September 8, 2011

DECISION

SUBMISSIONS

Dominique Roelants	counsel for Ocean Pointe Realty Ltd, carrying on business as Re/Max Ocean Pointe Realty
Gina Jensen	on her own behalf
Bob Krell	on behalf of the Director of Employment Standards

OVERVIEW

1. Ocean Pointe Realty Ltd., carrying on business as Re/Max Ocean Pointe Realty (the "Employer"), appeals a determination of a delegate (the "Delegate") of the Director of Employment Standards (the "Director") dated May 26, 2011 (the "Determination").

2. The Delegate decided that the Employer had contravened section 63 of the *Employment Standards Act* (the "*Act*") when it failed to pay its former employee, Gina M. Jensen (the "Complainant"), compensation for length of service in the amount of $7,367.00. The Delegate ordered the Employer to pay that sum, together with interest in the amount of $84.16. The Delegate also imposed a $500.00 administrative penalty under section 29 of the *Employment Standards Regulation*. The total found to be owed was $7,951.16.

3. I have before me the Determination, the Delegate's Reasons for the Determination, the Employer's Appeal Form, submissions from its counsel, the record the Director has delivered to the Tribunal pursuant to section 112(5) of the *Act*, and a submission from the Complainant.

4. Pursuant to section 36 of the *Administrative Tribunals Act*, which is incorporated into these proceedings by section 103 of the *Act*, and Rule 17 of the Tribunal's *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings when it decides appeals. A review of the material that has been delivered by the parties persuades me that I may decide the merits of this appeal on the basis of the written documentation before me without conducting an oral, or for that matter an electronic, hearing.

FACTS

5. The Complainant commenced employment with the Employer as a bookkeeper in August 1994. Her employment was terminated, allegedly for cause, on January 7, 2011.

6. The Complainant sought compensation for length of service. Upon receiving notice of the complaint, the Employer's office manager advised the Employment Standards Branch that the Employer wished to proceed directly to a hearing.

7. The Branch forwarded to the Employer a Notice of Complaint Hearing dated April 7, 2011. The Notice was forwarded by registered mail. It stated that a hearing of the complaint would occur on May 17, 2011. The Branch also appears to have forwarded a Demand for Employer Records.

8. The Branch later forwarded to the Employer a letter dated May 5, 2011, again advising that the hearing would occur on May 17, 2011. The letter was also forwarded by registered mail. It said, in part:

> Your participation in resolving these matters is required. As outlined in the Notice, the Branch Adjudicator will make a Determination based on the best available evidence at the time of the hearing, even if you choose not to participate or be present at the hearing....
>
> The Notice of Complaint Hearing required that parties provide any records and evidence that they intend to rely upon in the hearing by April 29, 2011. Additionally, a Demand for Employer Records was issued specifying records to be produced by April 29, 2011. To date, no records or documents have been received from Ocean Point Realty Ltd. I presume that you do not intend to rely upon any documentation or records at the hearing, as you failed to provide those records as required by my April 7, 2011 correspondence. Please be advised that the adjudicator will not accept documents into the hearing process which have not been exchanged with the other party.
>
> ....
>
> Please find enclosed a copy of Ms. Jensen's complaint form and the documents she submitted with her complaint when filing. Also enclosed are the documents Ms. Jensen has provided as documents she intends to rely on at the hearing. These copies are for you to review prior to the hearing....

9. On May 12, 2011, the Employer emailed the Branch, attaching copies of several documents, including the termination letter prepared for the Complainant, a letter to the Complainant questioning the continuity of her employment, the Record of Employment the Employer had issued for the Complainant, timesheets, and payroll and cheque ledger information relating to the Complainant.

10. At 8:32 am on May 17, 2011, the Employer emailed the Branch advising that it would not be sending a representative to the hearing scheduled for later that day. At 8:55 am the Branch emailed the Employer acknowledging receipt of its message, and advising that the Branch adjudicator might make a determination based on the information received at the hearing, even if the Employer did not attend.

11. The Delegate conducted the hearing that day, as scheduled. He heard testimony from the Complainant and her two witnesses. As the Employer had declined to attend at the hearing, the Complainant's evidence went unchallenged. In the result, the Delegate concluded that the weight of the evidence did not support the Employer's contentions that the Complainant had given cause for the termination of her employment, or alternatively, that the amount of any compensation for length service to be paid to the Complainant should be reduced because her employment with the Employer had been interrupted.

ISSUE

12. Is there a basis for my deciding that the Determination must be varied or cancelled, or that the matter must be referred back to the Director for consideration afresh?

ANALYSIS

13. The appellate jurisdiction of the Tribunal is set out in section 112(1) of the *Act*, which reads:

> *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 made.*

14. Section 115(1) of the *Act* should also be noted. It says this:

> *115 (1) After considering whether the grounds for appeal have been met, the tribunal may, by order,*
>
> *(a) confirm, vary or cancel the determination under appeal, or*
>
> *(b) refer the matter back to the director.*

15. I have decided that the Employer's appeal must be dismissed. My reasons follow.

16. The jurisdiction of the Tribunal as set forth in the current version of the *Act* does not contemplate that an appeal will incorporate an opportunity for a disappointed party to bolster positions that failed to persuade during the process leading up to the issuance of a determination, in the hope that the Tribunal may reach a different, and more favourable, conclusion. Proceedings before the Tribunal are designed to correct error on the part of the Director, or his delegates. They are not meant to incorporate a review of the validity of the complaint *de novo*. This means that absent a finding that the determination is flawed in a way that engages one or more of the grounds of appeal set out in section 112, the Tribunal will decline the invitation to interfere with it.

17. It is also important to remember that the *Act* provides no opportunity for the Tribunal to correct a delegate's errors of fact, unless those errors can be said to constitute errors of law. Errors of fact do not amount to errors of law except in rare circumstances where they reveal what the authorities refer to as palpable and overriding error. This means it must be established that the factual conclusions of a delegate, or the inferences drawn from those factual conclusions, are inadequately supported, or are wholly unsupported, by the evidentiary record, with the result that there is no rational basis for the findings made, and so they are perverse or inexplicable. Put another way, an appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have reached the conclusions set out in the determination (see *Gemex Developments Corp. v. B.C. (Assessor)* (1998) 62 BCLR 3d 354; *Delsom Estates Ltd. v. British Columbia (Assessor of Area 11 – Richmond/Delta)* [2000] BCJ No.331).

18. It follows that the circumstances in which an appellant will be successful in persuading the Tribunal that it should disturb a delegate's findings of fact will be rare. The circumstances will be even rarer, in my view, where the appellant, like the Employer here, has refrained from attending at the hearing of the complaint.

19. The hearing was the principal fact-gathering exercise performed by the Delegate in this case. When it chose not to send a representative to the hearing, the Employer deprived the Delegate of the opportunity to receive its version of the relevant events, presented in the testimony of its witnesses, its cross examination of the Complainant and her witnesses, and its submissions as to the appropriate legal outcome that should emerge as a result. At best, the Employer may be said to have taken a calculated risk. At worst, it effectively surrendered the field to the Complainant. On either interpretation, the Employer consciously placed itself in a position from which it would be difficult to recover if, as events unfolded at the hearing, the Delegate determined that the evidence of the Complainant and her witnesses regarding the matters at issue should be accepted.

20. A principal argument of the Employer on appeal is that the Complainant's employment with the Employer was interrupted when she decided to work for another employer in 2007. The Employer says that the Complainant's employment with the Employer ceased at this time, and that the payroll records which were before the Delegate confirm this because they show the Complainant received no remuneration for a period of months thereafter.

21. The Employer argued that the Complainant was re-hired in September 2008, and that any compensation for length of service should be calculated from this date, rather than from the Complainant's original start date in

1994. If that is so, the Employer argues that the Complainant would be entitled to compensation equivalent to two weeks' wages, not eight.

22. In the Determination, the Delegate accepted the uncontradicted evidence of the Complainant and her witnesses to the effect that the Complainant did wish to quit her employment with the Employer in August 2007, because she had found employment elsewhere. However, the then manager of the Employer convinced her not to quit, but to "back up" her replacement by working Saturdays and after normal business hours. The payroll records before the Delegate showed that the Complainant did receive remuneration for work thereafter, albeit sporadically.

23. In its counsel's submissions on appeal, the Employer says that it accepted the Complainant's resignation in August 2007, but agreed with her that she would assist with the training of a replacement and would work on a casual basis until that was done. The Employer claims that the arrangement ended when the Complainant received a final pay cheque in November 2007. The Employer says the Complainant received no pay from that point until September 2008. The Employer argues that this demonstrates the Complainant ceased to be an employee from November 15, 2007, until September 1, 2008.

24. The evidence contained in the Employer's submission to the effect that it accepted the Complainant's resignation, yet retained her on a short term casual basis until November 2007, but no longer, is evidence that the Employer does not appear to have offered, expressly, to the Delegate prior to the issuance of the Determination. I infer, then, that the Employer wishes this evidence to be accepted on appeal as new evidence pursuant to section 112(1)(c).

25. The Tribunal's right to allow an appeal based on new evidence under subsection 112(1)(c) incorporates an obligation to exercise a discretion. The discretion must be exercised with caution. A rationale for this approach is embedded in section 2(d) of the *Act*, which stipulates that it is a purpose of the legislation to provide fair and efficient procedures for resolving disputes over its application and interpretation. It would discourage the vindication of that purpose if an appellant were to be permitted, as a matter of routine, to seek out new evidence to bolster a case which failed to persuade at first instance. Rather, proceedings under the *Act* are likely to be more fair and efficient if parties are encouraged to take care to seek out all relevant information during the investigation phase, and present it to the Director before he issues a determination.

26. One of the criteria that the Tribunal will apply in determining whether an appeal should be allowed on this basis is to ask whether the evidence could not, with the exercise of due diligence, have been presented to the Director during the investigation or adjudication of a complaint and prior to a determination being made. In other words, was the evidence really unavailable to the party seeking to tender it? At the same time, even if the evidence was not unavailable in this sense, the Tribunal may nevertheless consider it if an appellant can demonstrate that the evidence is important, there is good reason why the evidence was not presented at first instance, and no serious prejudice will be visited upon the respondent if it is admitted (see *Re Specialty Motor Cars*, BC EST # D570/98).

27. In my view, this evidence of the Employer relating to the Complainant's employment status following her expressed desire to resign was evidence that the Employer clearly had available to it prior to the issuance of the Determination. The Employer could have provided it to the Delegate prior to the hearing. It could also have presented it to the Delegate at the hearing itself, had it sent a representative to do so. The issue of the Complainant's status was a live one throughout, from the point of view of the Employer. The evidence was not considered by the Delegate because he did not receive it from the Employer. The Employer has provided no convincing explanation why it was not presented before the issuance of the Determination. I see

no principled basis on which the evidence should be admitted now, so as to ground a finding that the Determination is flawed.

28. In September 2008, the Complainant's job with the other employer ceased, and the Employer asked her to return to work on a full-time basis. The Employer argues that a "return" to work must mean that the employment had ended, and that the Complainant was being re-hired. However, the evidence the Delegate heard at the hearing was to the effect that the Complainant was returning to *full-time* employment. That evidence was consistent with the Complainant's position that she had remained an employee of the Employer throughout the time she was working for the other employer, even if her employment with the Employer was not full-time.

29. At the hearing, the Complainant stated that at the time of her return a principal of the Employer acknowledged that she would be returning with "full seniority." She also testified, and no-one appears to dispute, that after her return she continued to receive vacation pay from the Employer calculated at six percent of total wages. As section 58(1)(b) of the *Act* only requires an employer to pay vacation pay at six percent after five years of continuous employment, the Complainant argued, and the Delegate accepted, that an inference should be drawn that the Employer concurred with the Complainant's view that her employment was continuous throughout.

30. Finally, the Complainant referred to the Record of Employment she received from the Employer when she was dismissed. That ROE stated that the Complainant's first day worked was August 1, 1994, and her last day for which she was paid was January 7, 2011. There was no mention on the ROE that her employment had been interrupted, and that her first day worked should, therefore, read September 1, 2008.

31. On appeal, the Employer disputes an agreement about full seniority, and the payment of six percent vacation pay. The Employer submits that the Complainant was responsible for the financial management of the operation while she was employed by the Employer, and that she abused her position by overpaying vacation pay to herself.

32. The Employer argues that it should be permitted to address the issue of vacation pay for the first time on appeal because it was alluded to for the first time by the Complainant at the hearing, which the Employer did not attend. The Employer says that since it was provided with no notice prior to the hearing that the Complainant would be referring to vacation pay at six percent, it was denied the opportunity to reply to this evidence. The Employer asserts that this was a denial of natural justice which vitiates the Determination.

33. I disagree. It is obvious that the Employer had an opportunity to reply to the Complainant's evidence regarding vacation pay. It could have sent a representative to the hearing. That person would have heard the evidence, and could have responded to it. If the person was taken by surprise, he or she could have applied for an adjournment. The Director's obligation under section 77 is to make "reasonable" efforts to give a party like the Employer an opportunity to respond. It is not a standard of perfection. In my view, the Director's convening a hearing at which the Employer was invited to attend, tender evidence, and make submissions, was more than adequate to meet the standard that is imposed. I am further of the view that given the Employer's decision not to attend at the hearing, it would have been entirely unfair to the Complainant if the Delegate had stopped the hearing so as to seek input from the Employer every time the Complainant clarified or explained a matter in language that had not previously been expressly communicated to the Employer. In the circumstances, there was no failure on the part of the Delegate to observe the principles of natural justice.

34. It follows further, in my opinion, that since the Employer could have tendered its evidence relating to the issues of "full seniority" and vacation pay at six percent at the hearing, and it deprived itself of the opportunity to do so because no representative of the Employer decided to attend, there is no principled basis on which it should be permitted to submit it for the first time on this appeal.

35. As for the Record of Employment, the Employer says that the reference to August 1, 1994, as the first day worked was an error. It argues further that no ROE was issued when the Complainant allegedly resigned in 2007 because she did not ask for one. It speculates this was probably because she had found other employment. The person completing the ROE in 2011 read the form, and because it stated that the date to be inserted was the first day worked since the last ROE was issued, the August 1, 1994 date was included, incorrectly.

36. With respect to this "evidence," I say again that it was available to the Employer at the time the Delegate conducted the hearing, and should have been tendered at that time. I cannot say that it constitutes evidence that is "new" for the purposes of section 112(1)(c). The allegedly erroneous ROE was part of the package of documents the Employer delivered to the Branch prior to the hearing. There appears to have been no communication from the Employer at that time that the ROE was in error. While the ROE document is not conclusive of the issue whether the Complainant's employment with the Employer was interrupted, it constituted in my view at least some evidence on which the Delegate could rely in support of the conclusion that the Complainant's employment was continuous from August 1, 1994, until January 7, 2011.

37. On the substantive issue, the Employer submits that section 63 of the *Act* requires an employee to be employed for a period of "consecutive" months or years before compensation for length of service is payable. The Employer argues that this language implies continuous employment. If the Complainant's employment ended, and then re-commenced, which the Employer says it did, the start date for the purpose of calculating compensation for length of service must be fixed at the date the employment re-commenced. In this case, the Employer says the date is September 1, 2008, not August 1, 1994.

38. As I understand the Employer's argument, the Complainant's employment must be deemed to have come to an end in November 2007 because the Complainant ceased to receive any remuneration from the Employer "as an employee" from that time until September 2008. On this point, I note in passing that a letter from the Employer to the Complainant dated January 25, 2011, a copy of which was tendered by the Employer to the Delegate prior to the hearing, states that the Employer's records indicated the Complainant worked "on a contract basis for short periods in late 2007, *and early 2008* (emphasis added)." While it is not entirely clear, I take this evidence, and the submissions of the Employer, to mean that while the Complainant may have performed work for the Employer in the period from November 2007, until September 2008, it was contract work, not work that was done pursuant to a contract of employment. As such, that work should not be considered for the purpose of determining whether the Complainant continued to be employed by the Employer during this period.

39. In February 2011, the Complainant prepared a submission for the Branch in which she denied that she had worked for the Employer on a contract basis. She stated that she never signed any form of contract with the Employer. Indeed, it appears that no such contract has ever been produced by the Employer. In these circumstances, I am not persuaded that the Delegate's finding, implicit in the Determination, that the Complainant did not work for the Employer in the capacity of an independent contractor, was inexplicable or irrational. There was at least some evidence on which the Delegate could draw the conclusion that the work the Complainant performed for the Employer was employment work throughout.

40. Nor am I persuaded that it must be conclusively presumed that the Complainant was not an employee of the Employer from November 2007, until September 2008, because the Employer's payroll records indicate that the Complainant received no "employment income" during that period. The definition of "employee" in the *Act* is inclusive. This is in accord with the remedial nature of the legislation. The *Act* should, therefore, be given such fair, large and liberal construction as best ensures the attainment of its objects. The *Act* is designed to encourage employers to comply with certain minimum standards for the protection of employees. Therefore, an interpretation of the *Act* which extends its protections to as many employees as possible, is to be favoured over one that does not (see *Helping Hands Agency Ltd. v. British Columbia (Director of Employment Standards)* [1995] BCJ No.2524; *Machtinger v. HOJ Industries Ltd.* [1992] SCJ No.41).

41. To be sure, the nature of the Complainant's employment changed during the period from November 2007, until September 2008. She was not a full-time employee during that period, principally because she was working for another employer. But that fact, too, does not lead inexorably to the conclusion that she ceased to be an employee of the Employer (see *Skeena Project Services Ltd.*, BC EST #D179/01).

42. Again, there was evidence on the basis of which the Delegate was entitled to conclude that the Complainant's employment continued during the relevant period. She continued to perform work within the period, a point that was conceded in the material from the Employer that was before the Delegate at the time the Determination was issued. The witnesses who gave evidence for the Complainant at the hearing also confirmed that she performed work for the Employer during afternoons, after hours, and on Saturdays during the period from August 2007, to September 2008. Apart from the bald assertion of the Employer, there was no documentary evidence of substance affirming that the Complainant provided work as a contractor during the period in dispute, and the Complainant denied it in her evidence at the hearing. There was no evidence before the Delegate to the effect that the Complainant had been laid off. The Record of Employment for the Complainant that the Employer delivered to the Delegate implied that the Complainant was considered to be an employee from August 1994, until January 2011. The evidence given by the Complainant at the hearing was that when she returned to full-time employment with the Employer in September 2008, she was led to believe that her employment had been continuous, and that she would be entitled to "full seniority." She also said she was told that she would continue to receive six percent of wages for vacation pay, a benefit inconsistent with her commencing to be employed by the Employer at that time.

43. Much of this evidence could have been clarified, and perhaps undermined, had a representative of the Employer attended at the hearing. Since that did not happen, I cannot conclude that the Delegate erred in finding that the Complainant's employment was continuous throughout.

44. I note that section 65(1)(a) of the *Act* identifies circumstances where employees may be denied the benefit of section 63. Section 65(1)(a) says this:

> *65 (1) Sections 63 and 64 do not apply to an employee*
>
> *(a) employed under an arrangement by which*
>
> *(i) the employer may request the employee to come to work at any time for a temporary period, and*
>
> *(ii) the employee has the option of accepting or rejecting one or more of the temporary periods,*

45. This section was not referred to in the submissions of the Employer. I assume that is so because the Employer did not feel it was applicable in the circumstances. If so, I cannot help but agree. In her written submission to the Delegate the Complainant stated that she was a casual employee during the disputed period. Certain types of casual employees may be exempted from the protection of section 63, provided they

fall within the strict parameters of section 65(1)(a). Here, the evidence of the employment arrangement between the Employer and the Complainant during the disputed period was incomplete, at least in part because the Employer sent no representative to the hearing. In the end, I am not persuaded that the evidence discloses that the Complainant came to work for a temporary period at the request of the Employer on those occasions when she did perform work during the disputed period, or that the terms of the Complainant's employment during this period contemplated her having the option of accepting or rejecting one or more of the temporary periods of casual employment offered. Section 65(1)(a) is therefore inapplicable.

46. A second argument put forward by the Employer on appeal is that the Delegate erred in finding that there was no just cause for the Complainant's dismissal. If the Employer had been able to show just cause, the Complainant would have been entitled to no compensation for length of service.

47. The Employer's position regarding this issue that was made available to the Delegate prior to the issuance of the Determination was set out in a copy of the dismissal letter the Employer prepared, dated January 7, 2011. That letter said this:

> This letter is notice to you that your employment with Re/Max Ocean Pointe is being terminated with cause as of this date, January 7, 2011.
>
> The audit performed by the Real Estate Council revealed some serious issues with the Commission Trust Account over the last two years.
>
> The audit performed by Pat Moore revealed that the Commission Trust Account went into an over drawn position in the month of March 2010, this should have indicated a serious problem with this account at that time. You failed to communicate this to us which has resulted in a serious loss of confidence in your ability to carry out your duties.
>
> We have also observed a general decline in your day to day work performance, which has resulted in increased mistakes on your part.
>
> We did raise these issues with you in our meeting in October 2010. We have not seen any improvement in your performance since then.
>
> Under the circumstances, we have lost confidence in your ability to carry out your duties, and are terminating your employment without notice.

48. If the allegations contained in this correspondence had been proven to be correct, I grant that it would have raised serious concerns for the Delegate when he came to decide whether the Complainant was entitled to compensation for length of service. The problem for the Employer, however, is that its failure to send a representative to the hearing meant that the letter remained a series of allegations. The Employer tendered no evidence of substance to support those allegations prior to the issuance of the Determination.

49. Moreover, the Complainant gave an explanation of the events referred to in the letter. In her evidence at the hearing, and in the material she had submitted to the Branch during the course of the investigation, the Complainant said that errors had been made, by other employees for the most part, but also because of some computer problems. However, the errors had been corrected to the apparent satisfaction of all. She also stated that no one advised her that her performance at work had become an issue. Her dismissal came as a complete surprise and shock to her.

50. As I have said, no representative of the Employer attended at the hearing to refute the Complainant's account through cross examination, or the presentation of further supporting evidence. The burden of proving cause lay on the Employer. Given the result, it is clear that the Delegate decided that the Employer had failed to meet that burden. The weight to be attributed to the evidence that was presented was a matter for the

Delegate, especially where a hearing is conducted. I cannot conclude that the Employer has shown that the Delegate fell into error on this point.

51. On appeal, the Employer asserts that the Complainant's characterization of the events leading to her dismissal should be disbelieved. It has also provided many more details concerning the Complainant's management of the Employer's accounting function, the issues troubling the Employer at the relevant times, why they should be laid at the feet of the Complainant, and why, therefore, the Employer had just cause to dismiss her. Again, the time for the Employer to have presented this evidence, and its submissions regarding it, was before the Determination was issued, and not during these proceedings on appeal.

52. On the issue of cause, too, the Employer asserts that the Complainant tendered evidence at the hearing of which it was unaware. It argues that the Delegate should have adjourned the hearing in order to provide the Employer with an opportunity to refute that evidence, and that it was a denial of natural justice when the Delegate did not do so. I say again, the onus of proving cause was on the Employer. It was clear from the material the parties had delivered to the Branch prior to the hearing that the issue of cause would be a live one, and in particular, that the Complainant had her own version of the relevant events which the Delegate might plausibly accept, and if so, the Employer's allegation of cause would fail.

53. The Director had determined that the forum for adjudicating the complaint would be the hearing. If an Employer's representative had been present, he or she could have pointed out the alleged inconsistencies in the evidence of the Complainant which the Employer seeks on appeal to employ as a justification for disturbing the result contained in the Determination. The representative could also have led evidence to rebut the evidence of the Complainant, or requested an adjournment for that purpose. Instead, the Employer appears to have assumed that the allegations contained in its January 7, 2011, dismissal letter in particular were conclusive of the issue of cause, and that it need not attend at the hearing. It did so at its peril.

54. In the circumstances, I can discern no failure to act in accord with the principles of natural justice. In my view, the Employer denied itself the opportunity to respond fully to the Complainant's version of the relevant events when it decided that no one on its behalf should attend at the hearing.

ORDER

55. Pursuant to section 115(1)(a) of the *Act*, I order that the Determination dated May 26, 2011, be confirmed.

Robert E. Groves
Member
Employment Standards Tribunal