

An appeal

- by -

Creative Media International Inc.
(“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: Sheldon M. Seigel

FILE No.: 2010A/96

DATE OF DECISION: September 15, 2010

DECISION

SUBMISSIONS

Alexander Quaglia	on behalf of Creative Media International Inc.
Ayda Taghizadeh Toussi	on her own behalf
Chantal Martel	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Creative Media International Inc. (the “Employer”), of a Determination that was issued on June 9, 2010, by a delegate of the Director of Employment Standards (the “Director”). The Determination found that the Employer had contravened sections 21, 58, and 63 of the *Act* in respect of the employment of Ayda Taghizadeh Toussi (the “Employee”), and as wages were not paid within 48 hours of termination of the Employee, of contravening s. 18 of the *Act*. The Director ordered the Employer to pay to the Employee the amount of \$1231.62. This amount included wages, annual vacation pay, compensation for length of service, and accrued interest (s.88 of the *Act*).
2. The Director also imposed administrative penalties on the Employer under Section 29(1) of the *Employment Standard Regulation* (the “*Regulation*”) in the amount of \$500 each relating to sections 21 and 63 of the *Act* for a total amount payable of \$2231.62.
3. In the Appeal Form the Employer marked the box indicating that evidence has become available that was not available at the time the Determination was being made. He asks that the Tribunal refer the matter back to the Director. The Employer provides a written explanation of his grounds for appeal and attaches it to the Appeal Form.
4. The Employer requested a suspension of the effect of the Determination pending the decision of the Tribunal. The Director provided an undertaking not to engage in any collection action prior to the Tribunal rendering a decision.

ISSUES

5. The Appeal Form allows the following: “Please provide your detailed explanation on a separate sheet of paper.” The explanation so provided by the Employer begins: “I was dismayed to see this determination from Employment [S]tandards without having been given an opportunity to respond.” The opportunity to respond is a required component of natural justice. Accordingly I interpret the appeal as including as grounds for appeal that the Director failed to observe the principles of natural justice in making the Determination.
6. The issues in this appeal are whether the Director failed to observe the principles of natural justice, and whether evidence has become available that was not available at the time the Determination was being made.

ARGUMENT

7. The Employer claims that he was not given an opportunity to respond [to the claim].

8. He also says:
- The Employee's rate of pay is incorrectly stated in the Determination.
 - The funds deducted from the Employee's pay-check (\$52) constitute the monthly deduction for 50% of her parking pass.
 - The Employee was the payroll clerk and was instructed to pay herself separation and vacation pay and did so "to the best of my knowledge."
 - The Employee's record of employment is inaccurate and incomplete, though the Employer did sign it "trusting her to do her job correctly."
 - He would like the opportunity to review the Employee's bank records and pay-checks.
9. The Employee argues that she worked under a supervisor, the company's accountant, and as such she had no authority to pay herself. Rather, she says, her task as a bookkeeper was limited to financial record-keeping. She also says that her hourly rate of pay is confirmed in the records available to the Director, which records are signed by the Employer.
10. The Director submits the whole of the record that was before her at the time of the Determination. She submits that the Employer was given the opportunity to reply to correspondences sent to the Employer's corporate and personal address (shown by BC Online Corporate Registry Search to be a single address) and telephone messages sent to the Employer's registered phone number (which phone was answered by a recording identifying the Employer by name) but failed to do so.
11. The Director also submits that as the Employer did not participate in the investigation leading up to the Determination, "any submissions on these issues would be considered new evidence and at this point there is no compelling reason to accept this new evidence." Finally, the Director says the Determination was based on a full analysis of the evidence available at the time.

ANALYSIS

12. The Determination chronicles the efforts made by the Director to obtain the Employer's input. This includes a letter sent March 25, 2010, by registered mail to the Employer's address indicating that a complaint was received, a letter sent April 27, 2010, by registered mail to the Employer's address explaining the Director's preliminary findings based on the Employee's evidence, and a telephone message left at the Employer's phone. The registered letters were returned as the post office was unable to secure a signature and the Employer did not return the phone message.
13. Section 77 of the *Act* requires that the Director make reasonable efforts to afford a party the opportunity to participate in the complaint resolution process. In general terms this means that the party know the case against it and have an opportunity to participate in the investigation and be heard.
14. One of the stated purposes of the *Act* (section 2) is to provide "fair and efficient procedures for resolving disputes" and the "fair treatment of employees and employers." The Branch must make reasonable efforts to afford a party the opportunity to put its case forward for consideration in a timely fashion. There are, however, practical limits to be applied to such efforts in order that the procedure be fair and efficient and operate in a timely manner. I am satisfied that two registered letters and one telephone call, directed to the appropriate addresses and phone number as listed in the business registry, satisfies the requirement of reasonable effort in this case. Accordingly, I find that the Employer was not denied the opportunity to respond. I note that the

Employer provides no reason for his failure to receive the registered letters or for his failure to reply to the Director's telephone message.

15. The Determination documents the Director's evaluation of the Employee's evidence. I accept the Director's conclusions and find that the substantive submissions put forth by the Employer in the appeal offer no persuasive arguments to the contrary. The Employer's submissions are without any supporting documentation or records. Contrary to the Director's submissions, the substantive arguments provided by the Employer do not constitute new evidence. New evidence is evidence that was not available at the time the Determination was made, as distinct from evidence that was available but not accessed or presented to the Director at the time the Determination was made. The fact that the Employer did not participate in the Director's investigation and therefore did not present evidence does not make evidence now submitted new. I find that to the extent that any of the submissions made by the Employer in his appeal could be considered to be evidence, there is no support for the proposition that any of that evidence was not available at the time the Determination was made.
16. I conclude that there was no breach of natural justice occasioned by procedures relating to the Determination or the substance of the Determination. I find that no evidence has become available that was not available at the time the Determination was being made. The Appeal fails.

ORDER

17. Pursuant to section 115 of the *Act*, I confirm the Determination, dated June 9, 2010, together with whatever interest may have accrued since the date of issuance.

Sheldon M. Seigel
Member
Employment Standards Tribunal