

An appeal

- by -

Lang Inspections Ltd.
("Lang Inspections")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2011A/87

DATE OF DECISION: September 9, 2011

DECISION

SUBMISSIONS

Ross Lang	on behalf of Lang Inspections Ltd.
Landra Lamacchia	on her own behalf
Theresa Robertson	on behalf of the Director of Employment Standards

INTRODUCTION

1. Lang Inspections Ltd. (“Lang Inspections”) appeals a Determination issued by a delegate of the Director of Employment Standards (the “delegate”) on June 1, 2011, ordering Lang Inspections to pay its former employee, Landra Lamacchia (“Lamacchia”), \$1,689.06 on account of unpaid wages and interest (the “Determination”). This appeal was filed pursuant to subsection 112(1)(b) of the *Employment Standards Act* (the “*Act*”) – “the director failed to observe the principles of natural justice in making the determination”. In addition, and also by way of the Determination, the delegate ordered Lang Inspections to pay \$1,000 on account of two \$500 monetary penalties levied under section 98 of the *Act*. Thus, the total amount payable under the Determination is \$2,689.06.
2. Lang Inspections applied to have the Determination suspended pending the adjudication of this appeal (see section 113) and also provided a cheque for the full amount of the Determination. These funds are now being held in the Director of Employment Standards’ trust account. On July 13, 2011, the Tribunal issued an order suspending the Determination “until the Tribunal decides the merits of the appeal of the Determination”.
3. I am adjudicating this appeal based on the parties’ written submissions. I have also reviewed the delegate’s “Reasons for the Determination” (the “delegate’s reasons”) that were appended to the Determination (see subsections 81(1.1) and (1.3)) and the subsection 112(5) “record” that was before the delegate when she issued the Determination.

FACTUAL BACKGROUND

4. According to the information set out in the delegate’s reasons, Lang Inspections operates a vehicle inspection and repair business in Revelstoke. Mr. Ross Lang is the company’s principal. Ms. Lamacchia was employed as the firm’s receptionist from March 18, 2008, to June 21, 2010, at an \$18 per hour wage rate. On June 18, 2010, Ms. Lamacchia submitted a resignation letter tendering two weeks’ notice. Ms. Lamacchia’s resignation was accepted and on June 21, 2010, Lang Inspections provided her with a “To whom it may concern” letter confirming her 2-week resignation; the letter also stated: “...we indicated to her that she could be finished immediately and we required no further commitment from her”.
5. Lang Inspections apparently took the position before the delegate that the parties agreed Ms. Lamacchia would not work out her notice period and Ms. Lamacchia, in effect, released Lang Inspections from any further wage payment obligation. Ms. Lamacchia’s position was that she was ready, willing and able to work out her notice period but Lang Inspections did not require her to do so. She maintained that she was effectively been dismissed on June 21, 2010. She also maintained that she was owed some “banked” overtime wages. Ms. Lamacchia filed an unpaid wage complaint under the *Act*. The delegate presided at a complaint

hearing on October 19, 2010, and, about 7 ½ months later, issued the Determination and reasons dated June 1, 2011.

6. The delegate considered the conflicting *viva voce* testimony from Ms. Lamacchia and Mr. Lang as well as the relevant documents and determined that Ms. Lamacchia did not voluntarily leave her employment on June 21, 2010, but, rather, was informed that her services were no longer required and was thus dismissed. Since Lang Inspections provided neither written notice nor compensation for length of service (see section 63), Ms. Lamacchia was entitled to two weeks' wages. In addition, the delegate determined that the parties had a "time bank" arrangement in place – albeit one that did not comply with the *Act* – and that Ms. Lamacchia was owed some unpaid overtime pay. Accordingly, the delegate issued the Determination representing Ms. Lamacchia's section 63 entitlement, her unpaid overtime and section 88 interest. As previously noted, the Determination also included two \$500 monetary penalties reflecting Lang Inspections' contraventions of sections 63 and 40 (overtime pay) of the *Act*.

FINDINGS

7. Lang Inspections filed an Appeal Form seeking to have the Determination cancelled because the delegate failed to observe the principles of natural justice in making the determination. Although the Appeal Form states (in boldface type), "Please provide your detailed explanation on a separate sheet of paper", there is no explanation appended to the Appeal Form setting out the particulars of the natural justice ground of appeal.
8. There are several documents appended to the Appeal Form but these are simply documents that were submitted at the complaint hearing or other correspondence and documents either sent to or from the Employment Standards Branch. There is absolutely nothing in the material before me that sets out any sort of explanation regarding how or why the principles of natural justice were not observed in this case. On the face of things, there is no natural justice issue to be addressed. It appears that the delegate allowed the parties to provide all relevant evidence and that she carefully considered all of this evidence in the course of rendering her reasons which are, I might add, full and complete (over 6 single-spaced pages). Lang Inspections does not take issue with any of the delegate's unpaid wage calculations.
9. Accordingly, I am unable to conclude, based on the material before me (or, more accurately, the dearth of material), that the delegate failed to observe the principles of natural justice in making the Determination.
10. The first page appended to Lang Inspections' Appeal Form is a brief printed note from Mr. Lang that reads as follows:

Reasons For Determination:

Employee Quit!

Thks

Ross Lang

[signature]

11. Although it is the parties' responsibility to file complete submissions with the Tribunal, one must also recognize that the parties who come before the Tribunal are typically not represented by legal counsel and are often unsophisticated about legal concepts and procedural requirements. Thus, the Tribunal will remind parties that it is their obligation to file, for example, a complete explanation regarding their reasons for appeal. In this case, the Tribunal contacted Mr. Lang, both by letter and telephone, and asked him whether he wished

to file anything further in addition to his original appeal documents. Mr. Lang indicated that he did not wish to do so.

12. One might interpret the statement, “Employee Quit”, as an assertion the delegate erred in law (subsection 112(1)(a)) in finding that Ms. Lamacchia was terminated. In the frequently cited decision, *Triple S Transmission Inc.*, BC EST # D141/03, the Tribunal stated that it would take a large and liberal view of the appeal documents when considering what particular ground(s) of appeal are properly before it. However, even if one were to conclude that Lang Inspections intended to advance an “error of law” argument, the delegate’s determination that Ms. Lamacchia was dismissed, rather than voluntarily quit, could only be characterized as an error of law if the delegate made this finding without any evidence whatsoever or this conclusion was based on a view of the evidence before her that could not be reasonably entertained (see *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)*, 1998 CanLII 6466 (B.C.C.A.)). In my view, there was a sufficient evidentiary basis for the delegate’s conclusion that Ms. Lamacchia was dismissed. Indeed, so far as I can determine, this was the only reasonable determination to be made given the evidence before the delegate.
13. It follows that this appeal must be dismissed and, in addition, the Tribunal’s order suspending the Determination is now no longer in effect.

ORDER

14. Pursuant to sections 114(1)(f) and 115 of the *Act*, this appeal is dismissed and the Determination confirmed in the amount of \$2,689.06 together with whatever further section 88 interest that may have accrued since the Determination was issued.
15. Since this appeal is dismissed, the Tribunal’s July 13, 2011, order, suspending the Determination pending the adjudication of this appeal on its merits, is no longer in effect.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal