

An appeal

- by -

Mokhtar Yousef Bigloo  
(“Bigloo”)

- 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.:** 2014A/111

**DATE OF DECISION:** October 22, 2014

## DECISION

### SUBMISSIONS

Mokhtar Yousef Bigloo

on his own behalf

### INTRODUCTION

1. Mokhtar Yousef Bigloo (“Bigloo”) was employed as a “foreman” with Brentwood Trailers Manufacturing Ltd. (“BTM”) from February 27, 2010, to April 11, 2012. Mr. Bigloo resigned his employment and in a handwritten note headed “Reasons for Resignation” dated May 4, 2012, delivered to BTM he identified several reasons for resigning his employment. At the point of resignation, he was earning a \$32 hourly wage.
2. On June 18, 2012, Mr. Bigloo filed a complaint under section 74 of the *Employment Standards Act* (the “*Act*”) against BTM claiming overtime pay, compensation for a “promised raise” and certain other benefits that had apparently been promised to him but never materialized and, despite his resignation, compensation for length of service.
3. Mr. Bigloo’s complaint was the subject of a hearing before a delegate of the Director of Employment Standards (the “delegate”) on January 9, 2013. Approximately 1½ years later, on July 18, 2014, the delegate issued a Determination and accompanying “Reasons for the Determination” (the “delegate’s reasons”). The delegate concluded that the *Act* had not been contravened and that, accordingly, no wages were owing to Mr. Bigloo.
4. I am troubled that there was such a lengthy delay from the date of the complaint hearing to the issuance of the Determination. This unexplained delay is certainly not in keeping with one of the stated purposes of the *Act*, namely, the provision of fair and efficient dispute resolution procedures (section 4(d)).
5. Mr. Bigloo now appeals the Determination on the ground that the delegate erred in law (subsection 112(1)(a) of the *Act*) and failed to observe the principles of natural justice in making the Determination (subsection 112(1)(b) of the *Act*). At this juncture, I am reviewing the appeal under section 114(1)(f) of the *Act* to determine whether it should be summarily dismissed as having no reasonable prospect of succeeding. If the appeal is not summarily dismissed, the respondent parties will be notified and given the opportunity to file submissions regarding the merits of the appeal.
6. In considering the appeal, I have reviewed the Determination and the delegate’s reasons, the section 112(5) record that was before the delegate (285 pages) and Mr. Bigloo’s appeal submissions.

### REASONS FOR APPEAL & FINDINGS

7. As noted above, Mr. Bigloo appeals the Determination on two grounds, namely, that the delegate erred in law and failed to observe the principles of natural justice in making the Determination. Mr. Bigloo’s appeal submissions (contained in a 3-page handwritten note appended to his Appeal Form) do not contain *any* evidence or argument that raise, even on a *prima facie* basis, a natural justice issue. Accordingly, the appeal must be dismissed in its entirety with respect to this latter ground of appeal.
8. Mr. Bigloo says that the delegate erred in law rejecting his claims for: i) unpaid wages based on BTM’s promise to raise his salary and provide certain other employment benefits after the first three months of his

employment; ii) overtime pay; and iii) compensation for length of service. I will now more fully address each of these issues in turn.

9. The delegate determined that Mr. Bigloo's assertion that BTM "promised" him a \$2 per hour wage increase (and extended health benefits) after his first three months of employment did not create an enforceable unpaid wage claim under the *Act*. The delegate found that while the parties did discuss these matters, their discussions never crystallized into a concluded contract. BTM's evidence at the complaint hearing was that each time Mr. Bigloo raised these matters, it unequivocally informed him that it would not agree to raise his pay or provide him further benefits because it was not in a financial position to do so.
10. It should be noted that there never was a formal written agreement between the parties regarding these matters and that Mr. Bigloo continued to work for BTM for nearly two more years after his first three months of employment. The delegate's finding of fact that there never was an agreement regarding the \$2 per hour wage increase, or the provision of further benefits, is one that was open to him given the parties' differing explanations about what had actually occurred. Further, Mr. Bigloo's continued acceptance of his terms and conditions of employment after his first three months, could be taken as evidence that he effectively submitted to the employer's proffered terms and conditions of employment (see, e.g., *Watson v. Seacastle Enterprises Inc.*, 2007 BCSC 365).
11. The delegate rejected Mr. Bigloo's claim for overtime pay on the basis that he was a "manager" as defined in section 1 of the *Employment Standards Regulation* (the "Regulation") and therefore not entitled to the premium pay for overtime hours set out in Part 4 of the *Act*. Mr. Bigloo maintains, as he did at the complaint hearing, that although he had managerial responsibilities, the greater share of his duties were "non-managerial" in nature and, as such, he was entitled to supplemental premium pay – Mr. Bigloo was paid for his "overtime" hours at his regular hourly wage.
12. The delegate's determination that Mr. Bigloo was a "manager" was made in the face of conflicting evidence regarding how much time Mr. Bigloo spent in "managerial" versus "non-managerial" tasks. Ultimately, the delegate found that his principal duties were managerial in nature and this finding was open to him in the face of the conflicting evidence tendered at the complaint hearing. Mr. Bigloo's appeal on this score amounts to not much more than a statement of disagreement with the delegate's findings of fact relating to the ambit of his duties. A finding of fact can constitute an error of law but only if the impugned factual finding was not supported by a proper evidentiary foundation. In this case, the delegate's finding that Mr. Bigloo fell within the regulatory definition of "manager" was supported by evidence he found to be cogent and credible and I am unable to find he erred in law in so finding.
13. Finally, the delegate rejected Mr. Bigloo's claim for compensation for length of service. Compensation for length of service is not payable if the employee voluntarily resigns their employment (subsection 63(3)(c) of the *Act*). Mr. Bigloo, in his own words (recall his May 4, 2012, "Reasons for resignation" letter to BTM), stated that he resigned his employment. He stated in his complaint form that he "quit" his employment. BTM issued him a "record of employment", as required by federal law, in which it stated that Mr. Bigloo "quit" his employment and there is nothing in the record before me to indicate that he ever challenged this characterization of how his employment ended.
14. Notwithstanding the evidence to the effect that Mr. Bigloo resigned his employment and was not terminated by BTM, he argued that his resignation was triggered by BTM's conduct toward him. The common law notion of "constructive dismissal" is, to a degree, codified in section 66 of the *Act*: "If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated." The delegate turned his mind to this statutory provision and concluded that BTM had not

“substantially altered” any of Mr. Bigloo’s employment conditions. I have reviewed Mr. Bigloo’s May 4 resignation letter and it contains several general and uncorroborated allegations of “unfair treatment” and a “poor”, “unsafe” and “unhumaine” (*sic*) working environment and, more particularly, is a statement of his overall dissatisfaction with BTM as an employer. However, there is nothing in the record before me that indicates that BTM substantially changed any of his terms and conditions of employment (for example, by unilaterally significantly reducing his pay or working hours) and, accordingly, the delegate cannot be said to have erred in law in dismissing Mr. Bigloo’s claim for compensation for length of service.

15. Having reviewed each of Mr. Bigloo’s asserted grounds of appeal, I find that none of them has any reasonable prospect of succeeding. That being the case, this appeal must be dismissed in its entirety.

### **ORDER**

16. Pursuant to subsection 114(1)(f) of the *Act*, this appeal is dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Determination is confirmed.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**