

An appeal

- by -

Hardeep Singh
("Mr. Singh")

- 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.: 2017A/90

DATE OF DECISION: September 13, 2017

DECISION

SUBMISSIONS

Hardeep Singh

on his own behalf

OVERVIEW

1. Hardeep Singh (“Mr. Singh”) has filed an appeal under section 112 of the *Employment Standards Act* (the “Act”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on May 25, 2017.
2. The Determination found Mr. Singh had not filed his complaint with the Director within the time limits specified in section 74 of the *Act* and, exercising the authority granted to the Director under section 76 of the *Act* – specifically section 76(3) (a), refused to process the complaint.
3. This appeal is grounded in an allegation the Director failed to observe principles of natural justice in making the Determination. Mr. Singh seeks to have the Determination varied and the matter referred back to the Director.
4. In correspondence dated July 17, 2017, the Tribunal acknowledged having received the appeal and, among other things, requested the section 112(5) record (the “record”) from the Director and notified the parties 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 record has been provided to the Tribunal by the Director and a copy has been delivered to Mr. Singh, who has been given an opportunity to object to its completeness. There has been no such objection and, accordingly, the Tribunal accepts the record 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 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. Singh's former employer 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 here is whether this appeal should be allowed to proceed or be dismissed under section 114(1) of the *Act*.

THE FACTS

9. Mr. Singh worked for S C Dhillon Enterprises Ltd. (the "Employer") from December 17, 2015, to June 2, 2016. Mr. Singh indicated to the Director he quit his employment after the Employer had failed to pay him any wages for two months – April and May, 2016. He filed a complaint with the Director on February 3, 2017, alleging the Employer contravened the *Act* by failing to pay all regular wages, overtime, vacation pay and statutory holiday pay owed to him.
10. The Director received and reviewed the complaint. Mr. Singh was advised by the Director the complaint was delivered two months past the time period provided in section 74 of the *Act* for filing a complaint. He was invited to explain why he had failed to file his complaint within the six-month period following the termination of his employment.
11. Mr. Singh included a submission with his complaint that set out three reasons for his late filing:
- I was not aware of the Employment laws of Canada also protect Temporary workers like me;
 - I was scared;
 - I was made believe [*sic*] that it is my obligation to pay the employer because he was supporting my Provincial Nominee Application
12. The record indicates the Director also had telephone discussion in which Mr. Singh indicated he was researching his employment rights while still working for the Employer, but had not filed a complaint because his long hours of work left him drained.
13. The Director considered the reasons provided by Mr. Singh for the delay, finding them not to be particularly compelling, and also considered the ready availability of information on time limits for filing complaints, the principles that operate when considering whether to accept a late filing, and the purposes of the *Act* in deciding not to proceed with his complaint.

ARGUMENT

14. In support of his appeal, Mr. Singh has restated the reasons he provided to the Director for not having filed his complaint within the statutory time period found in section 74 of the *Act*: that he was new to Canada and unfamiliar at the time with employment laws; that he was led to believe the Employer could require him to pay \$1,500.00 each month for his job; and that he was scared.

15. On August 9, 2017, which is well after the statutory appeal period, the Tribunal received a further submission from Mr. Singh in which he stated another reason for his not filing a complaint within the time period was that he was not aware of where to send a complaint concerning his employment issues. It does not appear this explanation was ever provided to the Director.

ANALYSIS

16. 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.*

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

18. 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.

19. A party alleging a breach of principles of natural justice must provide some evidence in support of that position: *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.

20. In context, I find nothing in the appeal that would support a finding the Director failed to comply with principles of natural justice. In the circumstances, the only obligations placed on the Director by principles of natural justice were to advise Mr. Singh his complaint was not filed within the period allowed in section 74 of the *Act*, to provide him with an opportunity to explain the delay, to fairly consider his reasons and to make a decision.

21. The Director satisfied those obligations; Mr. Singh has not established this ground of appeal.

22. In reality, however, the appeal is not about natural justice principles at all. It is about the decision of the Director – which is a discretionary decision – to not proceed with the complaint. This appeal is more directly about whether Mr. Singh can show there was an error of law made by the Director that can and will be reviewed by the Tribunal and, potentially, cause the decision of the Director to be altered. As indicated above, the appeal challenges the discretionary decision by the Director to not accept, investigate and make a decision on the merits of Mr. Singh's complaint.

23. To successfully demonstrate an exercise of discretion by the Director is an error of law, a party must show the exercise of discretion was not made in good faith, there was a mistake in construing the limits of authority, there was a procedural irregularity or the decision was unreasonable, in the sense that there was a failure to correctly consider applicable principles, a failure to consider what was relevant or a failure to exclude from consideration matters that were irrelevant or extraneous to the purposes of the *Act*: see *Takarabe and others*, BC EST # D160/98, and *Jody L. Gondreau and another*, BC EST # D066/98.

24. I am not persuaded Mr. Singh has shown any basis upon which the Tribunal may interfere with the Director's exercise of discretion in this case. The *Act*, in section 76(3), clearly grants the Director discretionary authority to refuse to proceed with a late complaint, the Director correctly identified and considered applicable principles, did not adopt a procedure that was wrong or unfair to Mr. Singh and did not fail to consider what was relevant or fail to exclude from consideration what was irrelevant.
25. In respect of the August 9, 2017, submission, I am unable to give effect to that submission for several reasons. First, the explanation provided does not show the Director committed an error in exercising the discretion granted in section 76. As it does not appear the Director was ever given the explanation provided in the submission, it could not have been considered by the Director in deciding whether to accept the late filing. The Director can hardly be faulted for not considering an explanation Mr. Singh never advanced as a reason for the late filing. It does not show there was an error by the Director that would justify interfering with the discretionary decision not to process the complaint. Second, the explanation is similar to Mr. Singh's saying he was unfamiliar with the protection offered by employment laws, which the Director found, and with which I agree, was not a particularly compelling explanation for the delay in filing. To paraphrase the Director, information about the process for advancing employment wage claims is readily available to the public. Third, the explanation does not seem consistent with the comment made by Mr. Singh to the Director that he was researching employment laws while still working for the Employer, which means Mr. Singh let his concerns ride for considerably more than six months from his researching his employment rights to his getting information that led to him filing a complaint with the Director. Fourth, this submission smacks of an attempt by Mr. Singh to introduce "new evidence" into his appeal without seeking to establish a basis upon which the Tribunal should accept it. To compound matters, this "new evidence" was not submitted with the appeal, but has been provided to the Tribunal in a submission made well after the appeal period has expired.
26. Based on the above, I find this appeal has no reasonable prospect of succeeding. The purposes and objects of the *Act* are not served by requiring the other parties to respond to it. The appeal is dismissed under section 114(1)(f) of the *Act*.

ORDER

27. Pursuant to section 115 of the *Act*, I order the Determination dated May 25, 2017, be confirmed.

David Stevenson
Member
Employment Standards Tribunal