

An appeal

- by -

Daphne Jackson carrying on business as Cleaning Ladies (with Mops) also known  
as Let us Clean  
("Ms. Jackson")

- 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:** Shafik Bhalloo

**FILE No.:** 2017A/95

**DATE OF DECISION:** September 18, 2017

## DECISION

### SUBMISSIONS

Daphne Jackson on her own behalf carrying on business as Cleaning Ladies (with Mops) also known as Let us Clean

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Daphne Jackson on her own behalf carrying on business as Cleaning Ladies (with Mops) also known as Let us Clean (“Ms. Jackson”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on June 6, 2017 (the “Determination”).
2. The Determination found that Ms. Jackson had contravened Part 3, section 18 (wages); Part 4, section 40 (overtime); and Part 5, section 45 (annual vacation pay) of the *Act* in respect of the employment of Khaled Imam (“Mr. Imam”) and ordered Ms. Jackson to pay wages to Mr. Imam in the total amount of \$1,382.24 inclusive of accrued interest. The Determination also levied two administrative penalties against Ms. Jackson \$2,500 each for breaches of sections 18 of the *Act* and 46 of the *Employment Standards Regulation* (the “*Regulation*”), for the second time within 3 years. The total amount of the Determination is \$6,382.24.
3. Ms. Jackson’s appeal is grounded in an assertion that the Director erred in law in making the Determination. Ms. Jackson seeks the Tribunal to change or vary the Determination.
4. The deadline to file the appeal of the Determination was July 14, 2017. On July 14, 2017, the Tribunal received Ms. Jackson’s appeal submission. The appeal submission, however, did *not* include a copy of the Director’s written reasons for the Determination, which is a statutory requirement for inclusion with an appeal (see subsection 112(2)(a)(i.1)) of the *Act*).
5. On July 21, 2017, the Tribunal corresponded with the parties advising them that it had received Ms. Jackson’s appeal including her request for an extension of deadline to file the appeal. The Tribunal requested Ms. Jackson to provide the Tribunal with the written reasons for the Determination and her written reasons for an extension to the deadline to file the appeal by 4:00 p.m. on August 4, 2017. In the same correspondence, the Tribunal requested the Director to produce the section 112(5) “record” (the “Record”) and notified the other parties that no submissions were being sought from them pending a review of the appeal by the Tribunal and that following such a review all, or part, of the appeal might be dismissed.
6. The Record was provided by the Director to the Tribunal on August 3, 2017. A copy of the same was sent by the Tribunal to Ms. Jackson on August 4, 2017, and the latter was given the opportunity to object to its completeness. Ms. Jackson has not objected to the completeness of the Record and the Tribunal accepts it as complete.
7. On August 28, 2017, the Tribunal informed the parties that the appeal had been assigned, that it would be reviewed and that following the review, all or part of the appeal may be dismissed. Consistent with the notice contained in the correspondence from the Tribunal dated July 21, 2017, I have reviewed the appeal, the appeal submissions and the Record. I have decided that this appeal is an appropriate case for consideration under section 114 of the *Act*. Therefore, at this stage, I will assess the appeal based solely on the Determination, the Appeal Form, written submissions of Ms. Jackson and my review of the Record that was

before the Director when the Determination was being made. Under section 114(1) of the *Act*, the Tribunal has the discretion to dismiss all or part of an appeal, without a hearing of any kind, for any of the reasons listed in that section 114(1). If satisfied the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1), the Tribunal will invite Mr. Imam and the Director to file a reply to the question of whether to extend the deadline to file the appeal, and may request submissions on the merits of the appeal. Ms. Jackson will then be given an opportunity to make a final reply to those submissions, if any.

## ISSUE

8. The issue to be considered at this stage of the proceeding is whether the appeal should be dismissed under section 114 of the *Act*.

## THE FACTS

9. There are no reasons for the Determination. Therefore, I am left to rely upon the Record to determine the facts and the steps leading to the Determination.
10. The Record shows that Mr. Imam filed his complaint against Ms. Jackson on March 16, 2016, claiming that he was not paid all his wages while employed as a cleaner and a driver by Ms. Jackson in her cleaning business during the period January 13, 2017, to February 1, 2017 (the “Complaint”).
11. A delegate of the Director commenced his investigation of the Complaint by conducting a B.C. Online: search for Cleaning Ladies on April 21, 2017. The search indicates that Cleaning Ladies is an active sole proprietorship, registered on May 30, 2013, and engaged in the janitorial services business. The search also shows that Cleaning Ladies has a business and mailing address at University Drive in Surrey, British Columbia. The search also shows that Ms. Jackson is the sole proprietor of Cleaning Ladies with the same address at University Drive, in Surrey, British Columbia, as Cleaning Ladies.
12. The Record also contains an email of the delegate, dated April 26, 2017, sent to Cleaning Ladies’ “letuscleanforyou” Hotmail address and copied to Cleaning Ladies second Hotmail address, namely, “cleaningladieswithmops”. The email is addressed to Ms. Jackson and indicates that Mr. Imam has filed the Complaint and the Employment Standards Branch (“the Branch”) is seeking to resolve the issues through a mediation or a hearing. The email also notes that the Branch has made a number of unsuccessful attempts to contact Ms. Jackson in an effort to resolve the Complaint and decided to schedule an adjudication hearing. The email also informs Ms. Jackson that if she wishes to resolve the matter through mediation before the adjudication hearing date then an officer can be made available to assist. The email warns that the Branch Adjudicator may make a determination based on information presented at the hearing and contained in the file, if Ms. Jackson or Cleaning Ladies does not participate in the hearing. Attached to the email are: the Complaint, the Notice of Complaint Hearing, a Demand for Employer Records, Branch factsheets (Witness, Complaint Hearing, Complaint resolution and Enforcement) and the Guide to Employment Standards Act.
13. The Record also contains a letter of the delegate to Ms. Jackson, dated April 27, 2017, sent to the University Drive address. This letter contains the same content as the delegate’s email of April 26, 2017, to Ms. Jackson referred to above.
14. The Record further includes a Notice of Complaint Hearing scheduling the hearing of the Complaint on May, 29, 2017 (the “Hearing”). This document is sent by email and Registered Mail to Ms. Jackson on April 27, 2017, at the university Drive address. It repeats the warning in the delegate’s previous email and

letter that “[t]he Adjudicator may make a Determination based on the information before them, **even if you choose not to participate at the hearing.**”

15. The Record also contains a Demand for Employer Records dated April 27, 2017 (the “Demand”), addressed to Ms. Jackson and sent by Registered Mail to the University Drive address. The Demand requests Ms. Jackson to produce employer records pertaining to Mr. Imam by May 12, 2017. The record does not contain any response to the Demand from Ms. Jackson.
16. The Record contains an email dated May 18, 2017, from the delegate to Ms. Jackson’s personal Hotmail address which is the same address she has provided on the Appeal form. In this email, the delegate refers to a previous discussion with Ms. Jackson that if she forwards a bank draft, money order, or a certified check payable to Mr. Imam in the amount of \$1,364.48 all proceedings would be cancelled and the file closed, once he receives the funds.
17. The delegate’s May 18, 2017, email is followed by a further email to Ms. Jackson at the same personal Hotmail address on May 19, 2017. This email states that if the payment of \$1,364.48 is not received by 9:30 a.m. on Monday, May 29, 2017, the Hearing would proceed and “escalated penalties of \$2,500 for each contravention of the Act may be applied.” The email encloses Mr. Imam’s List of Documents for Complaint Hearing and corresponding reliance documents of Mr. Imam numbering 35 pages.
18. Ms. Jackson, having received the delegate’s May 19, 2017, email responds from her personal Hotmail email address suggesting that it is convenient for her to come in to make a payment on “Fri 2<sup>nd</sup>” which I presume is June 2, 2017. The delegate responds to Ms. Jackson’s email on the same date advising that he is unable to grant her request and that the **“payment must be made no later than 9:30 a.m. on Monday, May 29, 2017 via e-transfer, certified cheque, bank draft, or money order.”**
19. There are no further email exchanges or other correspondence between the delegate and Ms. Jackson after the delegate’s email of May 23, 2017.
20. While there is no indication in the Record that the Hearing proceeded as scheduled, I note from the appeal submissions of Ms. Jackson, set out in the next section, that she attended the Hearing by telephone.
21. The Determination was issued on June 6, 2017, and sent by Registered Mail to Ms. Jackson at the University Drive address.
22. The Determination provides that a person named in a Determination may make a written request for reasons for the Determination and that the request must be delivered to an office of the Branch within seven days of being served with the determination. It also states that “[y]ou are deemed to be served eight days after the Determination is mailed” and in this case identifies that the request **“must be delivered by June 21, 2017”** which evidently Ms. Jackson failed to do.

## **SUBMISSIONS OF MS. JACKSON**

23. Accompanying the Appeal Form of Ms. Jackson are her written submissions on the merits of her appeal dated July 13, 2017. I propose to set out the submissions verbatim below:

I am writing this to be *[sic]* ask for an appeal of the case of Khaled Imam – Regarding the penalties – *[sic]* I was never contacted via email or mail with *[sic]* sheet which would allow me to do a *[sic]* mediation process & resolve before it got to a hearing. I talked to someone a week or so before the hearing, explained some of the situation & offered a solution – than *[sic]* took part in the hearing – via phone.

I take responsibility for the wages 100% [sic] there was some issue that came up that made it difficult & I wanted one opportunity to make right [sic].

I am human & do make mistakes but do this [sic] I deserve a chance to resolve before a hearing.

I can't afford \$5000.00 of fees especially after the hearing only [sic] had OK'ed [sic] my date to pay & then after that I got a call [sic] day or two after & said no – need it today [sic].

Please help me resolve this for all parties.

## ANALYSIS

24. Section 112(1) of the *Act* states that a person served with a determination may appeal the determination on three grounds, including that the Director of Employment Standards erred in law in making the Determination – the ground of appeal invoked by Ms. Jackson in this appeal.
25. Section 112(2) sets out the requirements for filing an appeal:
- (2) A person who wishes to appeal a determination to the tribunal under subsection (1) *must*, within the appeal period established under subsection (3),
    - (a) deliver to the office of the tribunal
      - (i) a written request specifying the grounds on which the appeal is based under subsection (1),
        - (i.1) *a copy of the director's written reasons for the determination*, and
        - (ii) payment of the appeal fee, if any, prescribed by regulation, and
      - (b) deliver a copy of the request under paragraph (a)(i) to the director. [Emphasis added]
26. The use of the word “must” in section 112(2) indicates that the requirements of subsection (2) are mandatory, that is, an appeal must both specify the grounds on which the appeal is based *and* include a copy of the director's written reasons for the determination. These materials are required to be delivered to the Tribunal before the end of the appeal period – “30 days after the date of service of the determination if the person was served by registered mail” (s. 112(3)).
27. As indicated previously, Ms. Jackson's incomplete appeal was received by the Tribunal on July 14, 2017. More particularly, the filed Appeal was missing the reasons for the Determination as well as the reasons for a request for an extension of time to the deadline to file the appeal. The Tribunal requested both missing documents from Ms. Jackson in its letter dated July 21, 2017, no later than August 4, 2017. Ms. Jackson did not comply with the Tribunal's request.
28. Having said this, I note that the Determination provides, at page 2, in bold, that “[a] person named in a **Determination may make a written request for reasons for the Determination**” and that request “must be delivered to an office of the Employment Standards Branch **within seven days of being served** with this Determination.” The Determination also states that “[y]ou are deemed to be served eight days after the Determination is mailed, so **your request must be delivered by June 21, 2017.**” Ms. Jackson's failure to comply with the requirements of section 112(2)(a)(i.1) of the *Act* to provide the Director's reasons for the determination is likely due to her failure to request them within the time limit specified in the Determination – June 21, 2017. It would appear she never requested the reasons for the Determination at any time.
29. I find that Ms. Jackson's failure to include a copy of the Director's written reasons for the Determination means that Ms. Jackson's appeal has not been perfected. Pursuant to section 114(1)(h) of the *Act*, the

Tribunal has discretion to dismiss an appeal where the appellant has failed to meet one or more of the requirements of section 112(2) of the *Act*. By failing to submit the Director's reasons for the Determination, Ms. Jackson has failed to meet the requirements of section 112(2)(a)(i.1) of the *Act*. Therefore, I dismiss Ms. Jackson's appeal.

30. In the alternative, if I am wrong in dismissing Ms. Jackson's appeal under section 114(1)(h) of the *Act*, I also find that Ms. Jackson's appeal has no reasonable prospect of succeeding pursuant to section 114(1)(f) of the *Act*.
31. More particularly, the grounds of appeal under the *Act* are statutorily limited to those found in section 112(1):

**Appeal of director's determination**

- 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.

32. The burden is on the appellant, Ms. Jackson, to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds of review in section 112(1).
33. In this case, Ms. Jackson's appeal is grounded in a claim that the Director erred in law in making the Determination. The Tribunal has adopted the following definition of "error of law" set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.):

- 1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
- 2. a misapplication of an applicable principle of general law;
- 3. acting without any evidence;
- 4. acting on a view of the facts which could not reasonably be entertained; and
- 5. adopting a method of assessment which is wrong in principle.

34. Having reviewed the Determination including particularly the Record and the written appeal submissions of Ms. Jackson, I am sufficiently satisfied that Ms. Jackson has not adduced cogent or any evidence to show there is an error of law in the Determination, as defined in *Gemex*, *supra*. I find that Ms. Jackson has simply checked off the "error of law" ground of appeal in the Appeal form without more. In the circumstances, I find the error of law ground of appeal advanced by Ms. Jackson is without any merit.
35. I have also reviewed Ms. Jackson's submissions in context of other grounds of appeal under section 112(1) of the *Act* – "natural justice" and "error of law" – but do not find any support for any of these appeal grounds.
36. Having said this, I note that in her appeal submissions, Ms. Jackson says she takes "100%" responsibility for the wages owed to Mr. Imam and wanted "a chance to resolve [the matter] before a hearing" but she was "never contacted via email or mail" to allow her to participate in a mediation process before the hearing. I

find this submission of Ms. Jackson, at best, disingenuous for the following reasons. Ms. Jackson was emailed at two Hotmail email addresses for Cleaning Ladies on April 26, 2017, as indicated in paragraph 13 above. In that email, she was not only informed of the Complaint but advised, among other things, that if she wished to resolve the matter through mediation before the adjudication hearing date then an officer can be made available to assist.

37. Following the April 26 email, the delegate sent a letter to Ms. Jackson, dated April 27, 2017, at the University Drive address, which is the same address Ms. Jackson uses on the Appeal form. This letter, too, contains the same content as the delegate's email of April 26, 2017, and reiterates that if she wished to resolve the matter through mediation before the adjudication hearing date, an officer can be made available to the parties for that purpose.
38. Further, the email of the delegate dated May 18, 2017, referred to in paragraph 16 above, suggests that Ms. Jackson had some discussions with him and he reminds her that if she forwards a bank draft, money order, or a certified check payable to Mr. Imam in the amount of \$1,364.48 all proceedings would be cancelled and the file closed, once he receives the funds.
39. The delegate then follows up the May 18 email with another email on May 19, ten days before the Hearing date, advising that if the payment of \$1,364.48 is not received by 9:30 a.m. on Monday, May 29, 2017, the Hearing would proceed and "escalated penalties of \$2,500 for each contravention of the Act may be applied." Ms. Jackson replies to this email on May 23, 2017, asking to make the payment on Friday, June 2, 2017. The delegate then responds on the same date that he is unable to grant her request and that the "**payment must be made no later than 9:30 a.m. on Monday, May 29, 2017 via e-transfer, certified cheque, bank draft, or money order**" failing which the Hearing would proceed and a determination will be issued.
40. Ms. Jackson appears not to have responded to the delegate's last email and then participates in the May 29, 2017, Hearing by telephone, according to her appeal submissions. In light of the forgoing evidence, Ms. Jackson had numerous opportunities to mediate or settle the Complaint before the Hearing and appears to have squandered them.
41. I also note that Ms. Jackson says she "cannot afford \$5,000" in administrative penalties issued against her under the *Regulation*. However, she had ample notice of the potential penalties when the delegate warned her about the "escalated penalties of \$2,500 for each contravention" in his email of May 19, 2017. I find Ms. Jackson is the author of her own misfortune here and there is simply no reasonable prospect that her appeal will succeed.
42. In the result, pursuant to section 114(1)(f) and (h) of the *Act*, I dismiss Ms. Jackson's appeal of the Determination.

**ORDER**

43. Pursuant to section 115 of the *Act*, I confirm the Determination made on June 6, 2017, together with any additional interest that has accrued under section 88 of the *Act*.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**