



An appeal

- by -

Global Plumbing, Heating and Gas Fitting Ltd.  
("Global")

- 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:** Carol L. Roberts

**FILE No.:** 2011A/102

**DATE OF DECISION:** September 20, 2011

## DECISION

### SUBMISSIONS

Hassan Naghibzadeh	on behalf of Global Plumbing, Heating and Gas Fitting Ltd.
Mehرداد Ghahremani	on his own behalf
Robert Krell	on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal by Global Plumbing, Heating and Gas Fitting Ltd. (“Global”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued June 24, 2011.
2. Mr. Ghahremani worked for Global from June 14, 2010, until July 31, 2010, as an apprentice plumber. On September 17, 2010, Mr. Ghahremani filed a complaint with the Director alleging that Global had contravened the *Act* in failing to pay him wages.
3. A delegate of the Director held a hearing into the complaint on April 4 and 20, 2011. Following the hearing, the Director issued a Determination finding that Global had contravened Sections 17, 18 and 28 of the *Act* in failing to pay Mr. Ghahremani wages and annual vacation pay. The Director ordered Global to pay wages and accrued interest in the amount of \$1,951.47. The Director also imposed three administrative penalties in the amount of \$500 for each of the contraventions, pursuant to Section 18 of the *Act*.
4. Global contends that the Director failed to observe the principles of natural justice in making the Determination and seeks to have the Determination varied. While Global does not dispute the wage determination, it seeks to have the administrative penalties set aside.
5. Section 36 of the *Administrative Tribunals Act* (“*ATA*”), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 17 of the Tribunal’s *Rules of Practice and Procedure* provide that the Tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This decision is based on the written submissions of the parties.

### ISSUE

6. Whether or not the Director failed to observe the principles of natural justice in making the Determination.

### FACTS

7. The issues before the Director at the hearing were the number of hours Mr. Ghahremani worked and his rate of pay. Each party submitted hand written calendars in support of their positions on the number of hours worked by Mr. Ghahremani, both of which the Director concluded were unreliable for different reasons. Ultimately, the delegate relied on the evidence of a third party witness who testified that Mr. Ghahremani worked on his house for 20 days. The delegate concluded that it was reasonable to assume that Mr. Ghahremani worked 8 hours each day, for a total of 160 hours. The Director added those hours to the

67.79 hours Global agreed he had worked, for a total of 227.79 hours. The Director used the statutory minimum wage of \$8.00 per hour in the absence of any agreement between the parties on Mr. Ghahremani's rate of pay. Based on these hours, the Director determined that Mr. Ghahremani was entitled to a total of \$1,822.32. The Director also found that Mr. Ghahremani was entitled to \$72.89 vacation pay and \$46.26 interest on the outstanding wages.

8. The Director found that Global had contravened three sections of the *Act*; Section 28 by failing to maintain a record of Mr. Ghahremani's daily hours of work, Section 17 by failing to pay Mr. Ghahremani wages at least semi-monthly, and Section 18 by failing to pay Mr. Ghahremani wages within 6 days of quitting his employment.
9. Global makes a number of arguments that are rendered irrelevant in light of its agreement to pay Mr. Ghahremani's wages. Global further asserts that although Mr. Ghahremani's wages were "ready for him to pick up", he did not do so because he disagreed with the amount. Mr. Naghibzadeh asks "Where is my fault?"
10. The Director notes that the appeal submission relates only to the fairness of the penalties, and that the basis for those penalties is set out in s. 98 of the *Act*.

## ANALYSIS

11. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
  - the director erred in law;
  - the director failed to observe the principles of natural justice in making the determination;
  - evidence has become available that was not available at the time the determination was made.
12. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
13. Although Global alleges a failure to comply with principles of natural justice as the ground of appeal, the written submissions are, in essence, an assertion that the penalties are unfair.
14. Mr. Naghibzadeh equated a notion of "fairness" with a natural justice argument. The Tribunal recognizes that parties without legal training often do not appreciate what natural justice means. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker. Natural justice does not mean that the delegate accepts one party's notion of "fairness".
15. I am satisfied that Global had full opportunity to respond to the complaint and present its case to the Director and find no merit to this ground of appeal.
16. Global disagrees with the Director's decision to impose three penalties for each of the contraventions of the *Act*. As I understand the submissions, Global does not necessarily agree with the Director's conclusions but is prepared nevertheless to pay the wages. However, he contends he did nothing wrong and that the penalty determinations are therefore unfair.

17. In *JC Creations* (BC EST # RD317/03) the Tribunal concluded that, given the purposes and provisions of the legislation, it is inappropriate to take an “overly legalistic and technical approach” to the appeal document: “The substance of the appeal should be addressed both by the Tribunal itself and the other parties, including the Director. It is important that the substance, not the form, of the appeal be treated fairly by all concerned.”
18. 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;
  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.
19. In my view, there is no error of law in the Director’s conclusion to impose three administrative penalties.
20. Section 98 of the *Act* provides that a person in respect of whom the Director makes a determination and imposes a requirement under section 79 is “subject to” a monetary penalty prescribed by the regulations:
- (1) In accordance with the regulations, a person in respect of whom the director makes a determination and imposes a requirement under section 79 is subject to a monetary penalty prescribed by the regulations.
- (1.1) A penalty imposed under this section is in addition to and not instead of any requirement imposed under section 79.
- ...
21. Section 29(1) of the *Employment Standards Regulation, B.C. Reg 396/95*, sets out a schedule of monetary penalties for “a person who contravenes a provision of the *Act* or this regulation, as found by the Director in a determination made under the *Act* or this regulation”.
22. In *Douglas Mattson* (BC EST # RD647/01) the Tribunal found that it could not ignore the plain meaning of the words of a statute and substitute its view of the legislative intent based solely on its judgement about what is “fair” or “logical”. Further, in *Action Super-Save Gas Stations Ltd.* (BC EST # D067/04) the Tribunal concluded that the *Act* provides for mandatory administrative penalties without any exceptions: “The legislation does not recognize fairness considerations as providing exceptions to the mandatory administrative penalty scheme.”
23. Global has not disputed the Director’s finding that it contravened three sections of the *Act*. Once the delegate finds a contravention, there is no discretion as to whether an administrative penalty can be imposed. Furthermore, the amount of the penalty is fixed by Regulation.
24. I find no error in the delegate’s decision to impose a penalty for each of the contraventions and dismiss the appeal.

**ORDER**

25. Pursuant to Section 115 of the *Act*, I order the Determination dated June 24, 2011, be confirmed in the amount of \$3451.47, together with any interest that has accrued under Section 88 of the *Act* since the date of issuance.

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**Carol L. Roberts**  
**Member**  
**Employment Standards Tribunal**