

An appeal

- by -

Imran Mamedov

- 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:** Robert Groves

**FILE No.:** 2006A/84

**DATE OF DECISION:** October 12, 2006

## DECISION

### SUBMISSIONS

Imran Mamedov	on his own behalf
Greg Brown	on behalf of the Director of Employment Standards
Michael W. Hunter, QC	on behalf of EaglePicher Energy Products Corp.

### OVERVIEW

1. This is an appeal brought by Imran Mamedov (“Mamedov”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) challenging a determination dated June 23, 2006 (the “Determination”) issued by a delegate of the Director of Employment Standards (the “Delegate”), in which the Delegate determined that Mamedov was not entitled to compensation for length of service following the termination of his employment with EaglePicher Energy Products Corp. (“EaglePicher”).
2. I have before me the Determination and the Delegate's Reasons for the Determination (the “Reasons”), Mamedov's Appeal Form and written submission in support, the record which has been provided to the Tribunal by the Delegate pursuant to section 112(5) of the *Act*, and a written submission from counsel for EaglePicher.
3. The Tribunal has determined that the appeal will be decided on the basis of the written materials received, without an oral hearing

### FACTS

4. Mamedov was employed as a Materials Analyst for EaglePicher from May 16, 2005 until January 5, 2006. EaglePicher develops and produces advanced batteries.
5. Mamedov and his immediate superior, a Rasto Kral (“Kral”), did not get along. In Mamedov's view, Kral was rude, unappreciative, and threatening. At a hearing conducted by the Delegate on May 29, 2006, he testified that owing to his personality conflict with Kral he wanted to quit on several occasions prior to the events of early January 2006 which saw his employment come to an end. Indeed, on one occasion in October 2005 Mamedov wrote out a notice of his resignation but later the same day Kral induced him to stay on.
6. An unpleasant telephone discussion with Kral on January 3, 2006, constituted the “last drop” for Mamedov. He again resolved to resign. In a written submission delivered to the Branch, he said this:

I did not want to go back and suffer any more. I put my health at risk while working there and I decided that no more. My decision to quit did not happen overnight, the situation was deteriorating gradually from bad to worst.

7. The next morning Mamedov left a voicemail message for Kral in which he said, in part, the following:

From tomorrow, Thursday, I'm quitting and giving 3 weeks notice. So, uh, I will be in tomorrow to train someone else. So please find someone else, uh, within uh, I don't know...what time, but I will be uh, giving uh, training for another three weeks.

So, uh, I think it will be better for everyone. Okay?

So see you tomorrow and...this is official note...notice uh...my quitting...um, from tomorrow, January...um,...January...5th, I believe. Yeah.

8. The Delegate's Reasons say that at the hearing Mamedov gave testimony to the effect that Kral called him back the same day and told him EaglePicher had decided to accept his resignation effective immediately, that he did not need to attend at work the next day, and that EaglePicher was not interested in Mamedov's offer to train his replacement over the ensuing three weeks. Kral also suggested that Mamedov discuss the matter with EaglePicher's Human Resources Manager, Margaret Ostrom ("Ostrom").
9. The Delegate's Reasons go on to say that Mamedov and Ostrom did have a conversation on January 4, 2006 in which, among other things discussed, Ostrom requested that Mamedov document his resignation in writing. Mamedov did so, preparing and submitting correspondence reading as follows:

Re: Resignation

January 4, 2006

Please accept this as a notice of resignation from my position of Materials Analyst effective January 5th, 2006 (with understanding that the Company, as per my conversation with Rasto Kral and Margaret Olstrom on January 4, 2006, unfortunately has refused my offer to provide necessary training for a replacement person during the next 3 weeks to ensure a smooth transition).

10. The next day, January 5, 2006, Ostrom wrote to Mamedov in reply. The relevant portion of that letter reads:

Re: Resignation

We are in receipt of your letter of resignation, dated yesterday, with an effective date of today.

We acknowledge your verbal offer to provide 3 weeks notice to allow you to train a replacement, but confirm our discussion yesterday, as follows: while noting that your employment contract requires you to provide 30 days notice, we advised that we were accepting your resignation immediately, pursuant to our right under the employment contract to accept your resignation at any time during the notice period.

11. Mamedov's employment contract stated, in paragraph 9, that:

The Employee may terminate this Agreement for any reason upon thirty (30) days written notice to EPEP. EPEP shall have the right to accept such resignation at any time within the thirty (30) day notice period, and upon such acceptance, the employment relationship shall terminate immediately.

12. Mamedov testified that he knew about the clause in his employment contract requiring him to provide thirty days written notice, but that he only gave three weeks notice because that was the amount of training he had received when he commenced his own employment with EaglePicher and he assumed that his replacement would require the same.
13. Subsequent to the events described, it appears Mamedov requested "pay in lieu of notice" from EaglePicher. The company declined. In an email to Ostrom dated January 22, 2006 Mamedov asked for confirmation that the company would not be reconsidering its decision. Ostrom replied by email on January 23, 2006, in these terms:

Re: Legal aspects of resignation

No, we will not be reconsidering our decision.

Please refer your solicitor to paragraph 9 of your employment contract, under which the Company is entitled to accept your resignation at any time during the notice period. At the point you resigned, after weighing our short term needs, we felt it would be best in the long term for the Company to make a clean break and to move forward immediately with alternative arrangements.

14. On February 14, 2006, Mamedov filed a complaint under section 74 of the *Act*, alleging that EaglePicher was liable to pay him compensation for length of service pursuant to section 63. On his Complaint and Information Form submitted to the Branch, in the box marked "Employment status", the word "Quit" appears. In the section headed "Details of your complaint", Mamedov says, in part:

On January 4, 2006 I notified my Manager, Rasto Kral, that I am quitting and giving him a 3-weeks notice. The same day he informed me that the Company decided to accept my resignation immediately. I was expecting that I would be paid for each week of notice, however, HR Manager Margaret Ostrom, refused to do so. I notified her that I would be filing a complaint...

15. In the Determination the Delegate decided that Mamedov had quit his job on January 4, 2006, that EaglePicher had accepted the resignation, and that both parties had agreed the resignation was to be effective on January 5, 2006. Having drawn those conclusions, the Delegate then determined that Mamedov was not entitled to compensation for length of service due to the effect of section 63(3)(c) of the *Act* which stipulates that an employer's obligation to pay compensation is discharged if the employee, *inter alia*, "terminates the employment".

## ISSUE

16. Should the Determination be confirmed, varied, or cancelled, or the matter referred back to the Director for consideration afresh?

## ANALYSIS

17. The Tribunal's jurisdiction with respect to appeals is set out in section 112(1) of the *Act*, which provides that a person served with a determination may appeal it 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.

### *Natural Justice*

18. Mamedov alleges on his Appeal Form that there was a failure to observe the principles of natural justice in the making of the Determination. In general, such a challenge gives voice to a procedural concern that the proceedings before the delegate were in some manner conducted unfairly, resulting in an appellant's either not having an opportunity to know the case he was required to meet, or an opportunity to be heard in his own defence.
19. In the context of proceedings under the *Act*, the obligation to observe the principles of natural justice is informed by the language of section 77, which reads:

77. If an investigation is conducted, the director must make reasonable efforts to give a person under investigation an opportunity to respond.
20. In his submission delivered in support of his appeal, Mamedov says that the Delegate did not, at the hearing, permit him to tell the "full story" concerning his relationship with Kral, yet the Delegate based his conclusions in part on that relationship.
21. The principal difficulty I have with this argument is that there is nothing in the material provided by Mamedov which identifies what other relevant evidence he might have tendered concerning his relationship with Kral which the Delegate refused to hear. It is, of course, Mamedov's responsibility as appellant to ensure that the material filed in support of his appeal is complete, and sufficient. An appeal is not a hearing *de novo*. It is a process designed to correct error, with the burden of showing error on the appellant (see: *MSI Delivery Services Ltd.* BCEST #D051/06).
22. It is clear from that part of the record which appears to have been generated by, or from the evidence of, Mamedov, that he made ample use of the opportunity to describe the difficulties he encountered while working under the supervision of Kral. The Delegate, rightly in my opinion, considered that evidence to be relevant for the purpose of determining whether Mamedov had formed an intention to resign. Mamedov does not dispute that he did, in fact, form an intention to resign.
23. At the same time, it must be remembered that one of the statutory objectives set out in section 2 of the *Act* is that the legislation provide not only *fair*, but also *efficient*, procedures for resolving disputes within its ambit. Thus, the Delegate was not obliged to hear all the evidence Mamedov wished to present, whether relevant or not. He was entitled to control the process of the hearing he conducted, and to decline to receive evidence that was irrelevant, and therefore unnecessary. It follows that if Mamedov had shown that there was relevant evidence he wished to present, which the Delegate refused to hear, there would be a foundation for the argument that the Delegate proceeded unfairly. Such an argument also presupposes, however, that an appellant will identify what the evidence in question is, and why it is alleged to be relevant. Mamedov's bald assertion that the Delegate acted unfairly when he declined to hear all the evidence Mamedov wanted to lead concerning his relationship with Kral, without further detail, is insufficient to meet this standard.

24. I find that Mamedov has not demonstrated that the Delegate failed to observe the principles of natural justice in making the Determination.

***Error of Fact***

25. While Mamedov's Appeal Form identifies a failure to observe the principles of natural justice as the sole ground for his appeal, his written submissions show that there is another aspect of the Determination which he seeks to challenge. Specifically, he argues that when he advised Kral on January 4, 2006 that he was resigning, his belief was that he was providing three weeks notice of his resignation, his intention being that he would work a further three weeks in order to assist in training his replacement.
26. Mamedov goes on to assert that his giving notice of his resignation, rather than his resigning, in effect, immediately, is supported by the communications he received from Ostrom to the effect that EaglePicher had decided to accept his resignation immediately, pursuant to its right under paragraph 9 of his employment contract to do so “at any time during the *notice period*” (emphasis added).
27. In these circumstances, Mamedov argues that the Delegate was wrong to decide, as a matter of fact, that he did not intend to give notice of his resignation, to take effect three weeks later, but rather intended to resign effective immediately while making himself available to train a replacement should EaglePicher wish.
28. In my opinion, the issue these arguments address is whether the Delegate committed errors of fact amounting to errors of law, so as to engage the Tribunal's appellate jurisdiction under section 112(1)(a) of the *Act*. Mamedov, of course, did not allege an error of law as a ground of appeal on his Appeal Form. Does this preclude me from considering the matter on this appeal? It does not. As several previous decisions of the Tribunal have stated, following *Triple S Transmission Inc.* BCEST #D141/03, the Tribunal will seek to discern the true basis for a challenge to the Determination, in order to do justice to the parties, regardless of the particular box an appellant has checked off on the Appeal Form.
29. Having said that, I must be cautious in exercising my discretion to consider this aspect of Mamedov's appeal, at least because counsel for EaglePicher in his submission specifically refrained from providing argument relating to any alleged errors of law, precisely because Mamedov did not formally identify such a challenge on his Appeal Form.
30. In the circumstances, I have decided to consider Mamedov's assertions relating to the Delegate's findings of fact, for three reasons. First, on the view I take of the merits of Mamedov's arguments it is, I believe, unnecessary for me to hear fully from counsel for EaglePicher on the point. Second, counsel for EaglePicher did, in his submission, discuss Mamedov's suggestion that I should disturb the Delegate's findings of fact, albeit in the context of his analysis concerning the Delegate's alleged failure to observe the principles of natural justice. Third, I am of the view that I am in possession of the information necessary to enable me to dispose of Mamedov's assertions on this aspect of the appeal, and that I do not require further submissions of the parties in order to do so.
31. Turning then to the substance of Mamedov's challenge under this head, I say immediately that the appellate jurisdiction the Tribunal now possesses under section 112 in no way contemplates the Tribunal's determining appeals involving alleged errors of fact *simpliciter*. Errors of fact only come within the scope of the Tribunal's purview when they amount to errors of law. The occasions on which an alleged error of fact amounts to an error of law are few.

32. In order to show that an error of fact amounts to an error of law, an appellant must show what the authorities refer to as palpable and overriding error, which involves a finding that the factual conclusions of a delegate, or the inferences drawn from those factual conclusions, are inadequately supported, or are wholly unsupported, by the evidentiary record, with the result that there is no rational basis for the finding, and so it is perverse or inexplicable (see *Gemex Developments Corp. v. B.C. (Assessor)* (1998) 62 BCLR 3d 354).
33. In the case before me, there was certainly some evidence on the basis of which the Delegate could have acceded to Mamedov's assertion that he intended to give notice of his resignation and work for a further three weeks to train his replacement. Not only could it be said that Mamedov's initial telephone message left for Kral on January 4, 2006 implied that he was giving notice, the communications Mamedov received from Ostrom on behalf of EaglePicher were also capable of supporting such an inference, given that they appeared, on one reading, to suggest the company had decided to terminate Mamedov's employment during the "notice period" he had provided.
34. The Delegate, however, came to a different conclusion. He decided that Mamedov intended to resign immediately, but to accompany his resignation with an offer to continue at work for a further three weeks to train a replacement, an offer EaglePicher forthwith declined to accept. In considering whether such findings were perverse, it is important to remember that the Delegate conducted a hearing in this case. He therefore had the benefit of observing the parties give testimony, including Mamedov. I have not. In circumstances like these, the Tribunal will be very reluctant to disturb a delegate's findings of fact, especially on matters of credibility.
35. Here, the Delegate made a specific finding that Mamedov did not really want to stay on for a further three weeks. He also decided that Mamedov was unaware of the requirement in his employment contract to give thirty days written notice of his resignation when he indicated he would make himself available to train his replacement. These findings of fact were important, because they tended to support an inference that Mamedov did not intend to give notice of his resignation, but instead intended to resign immediately. The fact that I might have come to different conclusions on the evidence is of no moment. The question is whether Mamedov has shown that the findings were irrational, perverse, or inexplicable. I do not think that he has, and I do not think that they were. In support of the first finding of fact, the Delegate queried why Mamedov would be willing to stay on at all, given the difficulty he had in dealing with Kral. On the second, the Delegate observed that if Mamedov was aware of his contractual obligation at the relevant time, he would have complied with it. Both justifications are logical. I cannot conclude they are irrational, perverse, or inexplicable.
36. While some aspects of the communications involving Mamedov and Ostrom to which I have referred are problematic, I am not persuaded that it was unreasonable for the Delegate to have identified certain parts of them as being more important for the purposes of rendering his decision. I refer in particular to the Delegate's emphasizing the fact that Mamedov's letter of resignation dated January 4, 2006 stated explicitly that his resignation was "effective" the next day, not three weeks later. That letter also characterized Mamedov's making himself available to train a replacement as an "offer" that EaglePicher had refused. Ostrom's letter to Mamedov of January 5, 2006 confirmed that his resignation was effective that day, and that his staying on to train a replacement was a "verbal offer". There was, therefore, some evidence which supports the Delegate's findings. He did not make them in an evidentiary vacuum.
37. In my opinion, Mamedov has failed to show that the Delegate made errors of fact which amount to errors of law.

38. It follows that the appeal must be dismissed.

**ORDER**

39. Pursuant to section 115 of the *Act* I order that the Determination dated June 23, 2006 be confirmed.

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**Robert Groves**  
**Member**  
**Employment Standards Tribunal**