

An appeal

- by -

Rockwell Management Inc.
(“Rockwell”)

- 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.: 2014A/127

DATE OF DECISION: November 19, 2014

DECISION

SUBMISSIONS

Richard McAnerin, Accountant

on behalf of Rockwell Management Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Rockwell Management Inc. (“Rockwell”) has filed an appeal of a Determination issued by the Director of Employment Standards (the “Director”) on August 8, 2014. In that Determination, a delegate of the Director ordered Rockwell to pay its former employee, Zeng Rong (Dennis) Deng, \$982.25 in wages, compensation for length of service, annual vacation pay and interest. The Director also imposed two administrative penalties in the total amount of \$1,000 for Rockwell’s contravention of sections 18 of the *Act* and section 46 of the *Employment Standards Regulation* (the “*Regulation*”), for a total amount payable of \$1,982.25.
2. Rockwell appeals the Determination contending that the delegate failed to comply with principles of natural justice in making the Determination.
3. These reasons are based on the written submissions of the parties, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination.

FACTS AND ARGUMENT

4. Mr. Deng was employed as a residential caretaker by Rockwell, a property management business, from April 29, 2013, until December 10, 2013. On January 28, 2014, Mr. Deng filed a complaint with the Employment Standards Branch, alleging that Rockwell had contravened the *Act* by failing to pay him wages, compensation for length of service and vacation pay. The Director’s delegate held a hearing on June 18, 2014. Mr. Deng represented himself. No one appeared at the hearing on Rockwell’s behalf.
5. The delegate noted that on March 14, 2014, a delegate attempted to contact a representative of Rockwell about Mr. Deng’s complaint by telephone. Although a delegate left a message, no one returned the call. On March 18, 2014, a Branch representative spoke with a receptionist at Rockwell who informed the delegate that “Reggie” would assume conduct of the matter, but that he was unavailable. The receptionist provided the delegate with an e-mail address for Reggie. The delegate sent Reggie an e-mail, attaching Mr. Deng’s complaint, and asked if he would be available the week of April 7, 2014, for a mediation session in an effort to resolve the complaint. Reggie was asked to contact the delegate to discuss the complaint. Reggie did not respond.
6. On April 12, 2014, the delegate made another attempt to contact Rockwell by telephone, without success.
7. On May 5, 2014, a Notice of Complaint Hearing was sent by registered mail to Rockwell’s business address, its Registered and Records office as well as its two directors, Partap Mehta and Navjoet Mehta. The Notice indicated that the delegate would conduct a hearing by teleconference on June 18, 2014, and included instructions on how to participate in that teleconference hearing. The delegate also sent Rockwell a Demand for Employer Records, which were to be produced by May 21, 2014. Rockwell was advised that a failure to produce the records would result in an administrative penalty. Canada Post tracking records confirm that the

Notice and Demand were received by Rockwell on May 8, 2014, and by Rockwell's Registered and Records office on May 7, 2014.

8. Rockwell did not respond to the Demand, and did not appear at the hearing.
9. The delegate heard Mr. Deng's evidence, which is summarized as follows.
10. On December 9, 2013, Rockwell's property manager, Reggie, told Mr. Deng that he was to return his keys to the office the following day as his employment was terminated. Although he was given no reason for the termination, Reggie told Mr. Deng that he would receive two week's wages as compensation for length of service. Mr. Deng returned his keys to the office as requested. He asked for a Record of Employment (ROE) and final wages. On December 15, 2013, Mr. Deng received an ROE and a cheque for regular wages from December 1 to December 5, 2013. He received no wages for work performed from December 6 - 10, vacation pay or compensation for length of service. Despite repeated requests for the outstanding wages, Mr. Deng received no further wages.
11. The delegate found that Rockwell had knowledge of the complaint and an opportunity to appear, and, having failed to do so, found that Mr. Deng was entitled to wages, compensation for length of service and vacation pay as noted above.

Argument

12. Rockwell submits that Mr. Deng's employment was terminated on December 5, 2013. While Mr. McAnerin concedes that Mr. Deng is entitled to compensation for length of service and vacation pay, he argues that the Determination does not take into account rent owed by Mr. Deng to the end of December. Mr. McAnerin also made submissions with respect to the appropriate statutory deductions on the amounts the delegate determined owing.
13. Mr. McAnerin seeks to have the administrative penalties "reconsidered" because, although Rockwell is in "technical violation of the Act" the violations were due to the "inexperience" of the individuals involved rather than any deliberate action by Rockwell.

ANALYSIS

14. Section 112(1) of the *Act* provides that a person may appeal a determination on 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.
15. 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.
16. In *J.C. Creations Ltd. o/a Heavenly Bodies Sport* (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."

17. Although Rockwell's ground of appeal is that the Director failed to observe the principles of natural justice, there is nothing in the submissions or the record that supports that ground of appeal.
18. 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. There is no evidence Rockwell was denied the opportunity to know the case against it or to respond fully.
19. The record confirms that Rockwell was aware of the complaint, and of the opportunity to mediate the complaint, as well as the opportunity to participate at the Hearing. Canada Post records confirm Rockwell received the Notice of Hearing, the Demand for Records and was notified of the potential liability if it failed to produce the documents.
20. Having failed to attend the hearing despite having knowledge of the opportunity to do so, it is not open to Rockwell to present its case for the first time on appeal.
21. Mr. McAnerin suggests that the administrative penalties for failure to pay wages and for failing to comply with the Demand for Employer Records should be waived because the individuals involved were "inexperienced."
22. Employers have an obligation to structure their affairs in a way that complies with relevant legislation. The record shows that Rockwell failed to do so. Once the delegate finds a contravention of the *Act* or the *Regulation*, there is no discretion as to whether an administrative penalty can be imposed or the amount of that penalty, since those amounts are prescribed by *Regulation*.

ORDER

23. Pursuant to section 114(1)(f) of the *Act*, I deny the appeal. Pursuant to section 115 of the *Act*, I Order that the Determination, dated August 8, 2014, be confirmed in the amount of \$1,982.25 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal