



An appeal

- by -

Ajay Chahal carrying on business as Zip Cartage
("Zip Cartage")

- 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.: 2014A/118

DATE OF DECISION: November 21, 2014

DECISION

SUBMISSIONS

Ajay Pal Singh Chahal

on his own behalf carrying on business as Zip Cartage

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “Act”), Ajay Chahal carrying on business as Zip Cartage (“Zip Cartage”) has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on August 1, 2014.
2. The Determination found that Zip Cartage had contravened Part 3, sections 17, 18 and 21 and Part 5, sections 45 and 46 of the *Act* and section 37 of the *Employment Standards Regulation* (the “Regulation”) in respect of the employment of Blair Scott (“Scott”) and ordered Zip Cartage to pay wages to Scott in the amount of \$2,726.17 and to pay administrative penalties in the amount of \$3,000.00. The total amount of the Determination is \$5,726.17.
3. Zip Cartage has filed this appeal on all of the grounds listed in section 112(1) of the *Act*: the Director erred in law; failed to observe principles of natural justice in making the Determination; and evidence has come available that was not available when the Determination was being made. Zip Cartage seeks to have the Determination varied, cancelled and/or returned to the Director.
4. On September 10, 2014, the Tribunal acknowledged to the parties that an appeal had been received from Zip Cartage, requested production of the section 112(5) “record” from the Director and notified the parties, among other things, that no submissions were being sought from the other parties pending review of the appeal by the Tribunal and that following such review all, or part, of the appeal might be dismissed.
5. The section 112(5) “record” was provided by the Director to the Tribunal and a copy was sent to Zip Cartage, who was advised of their right to object to the completeness of the section 112(5) “record”. There has been no objection and, accordingly, the Tribunal accepts it as complete.
6. Consistent with the September 10, 2014, notice, I have reviewed the appeal, including the submissions supporting the appeal submitted by Zip Cartage, and the section 112(5) “record”. I will also consider any additional evidence that is allowed to be added to the material in the file.
7. I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. At this stage, I am assessing this appeal based solely on the Determination, the appeal and my review of the section 112(5) “record” that was before the Director when the Determination was being made. Under section 114 of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing of any kind, for any of the reasons listed in subsection 114(1), which states:

- 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 the 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;*
- (h) *one or more of the requirements of section 112(2) have not been met.*

8. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, Scott will, and the Director may, be invited to file further submissions. On the other hand, if it is found the appeal is not meritorious, it will be dismissed under section 114(1) of the *Act*.

ISSUE

9. The issue to be considered at this stage of the proceeding is whether there is any reasonable prospect the appeal can succeed.

THE FACTS

10. Zip Cartage operates a local truck delivery service in the lower mainland. Scott was employed by Zip Cartage as a truck driver for a period from July 22, 2013, to November 16, 2013, when he terminated his employment. Shortly after terminating his employment, Scott filed a complaint alleging Zip Cartage had contravened the *Act* by failing to pay regular wages, annual vacation pay and statutory holiday pay.
11. Zip Cartage opposed the claim made by Scott, arguing he was not an employee under the *Act*, but an independent contractor. The Director conducted a complaint hearing, receiving a substantial amount of evidence from both parties on the issue of the status of Scott for the purposes of the *Act*. It is unnecessary to repeat all of the facts presented by the parties or the findings made by the Director and the analysis and conclusion of those facts. The Determination contains a fairly detailed account of all of these matters over ten pages in the Determination.

ARGUMENT

12. I shall set out each of the grounds of appeal and the arguments made in respect of those grounds under their respective headings.

Error of Law

13. Zip Cartage argues the Director misapplied the analysis for determining the status of Scott by evaluating the clauses in the contract signed instead of taking into consideration the facts presented as evidence during the complaint hearing. It is submitted that a contextual analysis of the facts would have resulted in a different outcome.
14. Zip Cartage argues the Director erred in the application of the “permanency test”, as the contract indicates it was valid for a year, commencing July 13, 2013. This provision contradicts the finding of the Director that the relationship between Zip Cartage and Scott did not provide an end date.
15. Zip Cartage submits the Director erred in applying the control test, arguing the Director failed to consider the totality of the evidence. In this respect, Zip Cartage points to fuel receipts from locations other than the Richmond location saying this was evidence of a limited degree of control by Zip Cartage over Scott. Zip

Cartage contends that, contrary to findings made by the Director, the evidence demonstrated they had no control over Scott. Zip Cartage points out there were matters going to the question of control that were not mentioned in the Determination, although, it is submitted, they were relevant to that question.

16. Zip Cartage asserts the Director “misconstrued” evidence relating to how Scott submitted daily invoices. This argument also challenges specific findings of fact made by the Director.
17. Under this part of their appeal Zip Cartage adds several assertions of fact that were not made to the Director, arguing the Director “incorrectly assumed” certain facts, did not correctly interpret information provided and reached incorrect conclusions of fact.
18. Generally, Zip Cartage argues the Director, primarily as a result of errors in findings of fact, by misconstruing the facts provided or by reaching conclusions on the facts that were not supported by the evidence, erred in the analysis of the control test.
19. Zip Cartage challenges the Director’s conclusion regarding the risk of loss/chance of profit analysis, submitting the Director’s analysis ignores Scott had increased his profit by approaching and securing work directly with Claddagh Services and bore the risk of losing more money by not working or using the fuel efficiently. Zip Cartage submits the Director erred by not finding Scott was in business for himself.
20. Zip Cartage argues the Director erred on the “ownership of tools” analysis when the evidence showed Scott, or the companies he worked for, provided most of the tools he used. They assert that apart from the truck, Zip Cartage provided nothing else.
21. Zip Cartage says the Director erred on the “specific results test and integration”, challenging the finding of the Director that Scott was hired to perform nothing more than a driving service and that this service was integral to Zip Cartage’s business.
22. Zip Cartage also submits the Director erred in finding the “economic realities” test supported the finding of an employment relationship.
23. Finally, Zip Cartage argues the Director erred in law in calculating the wages owed to Scott. Based on calculations submitted by Zip Cartage, they submit there were amounts included in the Determination that should not have been, as there was no evidence any amount had been deducted from other monies owed to Scott by Zip Cartage. Zip Cartage says this money was never deducted from Scott by them and challenges the Director’s finding that it was.

Natural Justice

24. Zip Cartage submits there was a denial of natural justice because they were not made aware of Scott’s materials prior to the complaint hearing. They say none of his documents or arguments were disclosed. It is also submitted the Director demonstrated a clear bias at the complaint hearing, showing favouritism to Scott and paying less attention to Zip Cartage. Zip Cartage says the Director did not seem to properly understand how all the relationship intertwined; the Director allowed Scott to manipulate the facts and to mislead the Director with insubstantial evidence.

New Evidence

25. Zip Cartage has submitted six additional “exhibits” with the appeal, comprised of:
- Exhibit “B” fuel receipts from a Langley gas station;
 - Exhibit “C” Claddagh Services earnings sheet from October 2013 showing Scott’s address as the location for Zip Cartage
 - Exhibit “D” Zip Cartage accounting summary of final pay;
 - Exhibit “E” a contract between Scott and Claddagh Services;
 - Exhibit “F” an e-mail from Susan Cullum confirming a relationship between Scott and Claddagh Services; and
 - Exhibit “G” Merchants Express driver handbook.
26. Zip Cartage submits all this additional evidence confirms Scott’s relationship with them was that of an independent contractor not an employee. Zip Cartage says it was not able to obtain this evidence prior to the complaint hearing for a number of reasons: Scott had misrepresented himself and had left the companies involved with “sour relationships” and the companies were not prepared to release most of the information – see, for example, exhibit “F”.
27. In sum, Zip Cartage says the delegate erred in finding Scott was their employee and, in light of the errors committed and the new evidence, the Determination should be cancelled and the matter remitted to the Director for consideration by a new delegate. As an alternative, Zip Cartage says the effect of the Determination should be suspended, the Determination varied and an amount of \$1,112.75 be included in any subsequent decision.
28. The appeal submission includes three pages of “incorrect facts used by the delegate”, comprising 18 points outlining errors of fact alleged to have been made in the Determination. Also included are over six pages of “facts”, which appear to be primarily a statement of the facts as asserted by Zip Cartage, sprinkled with some of the findings of fact made in the Determination. Lastly, the appeal submission contains a two page point-by-point response to the written submission presented by Scott at the complaint hearing, comprising fourteen points of response.

ANALYSIS

29. When considering whether the appeal has any reasonable prospect of succeeding, the Tribunal looks at the relative merits of an appeal, examining the statutory grounds of appeal chosen and considering those against well established principles which operate in the context of appeals generally and, more particularly, to the specific matters raised in the appeal.
30. 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.*

31. The Tribunal has established that an appeal under the *Act* is intended to be 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 of review identified in section 112. This burden requires the appellant to provide, demonstrate or establish a cogent evidentiary basis for the appeal.
32. Zip Cartage relies on all three of the statutory grounds of appeal. I will address each of the grounds of appeal, although not in the order they have been presented in the appeal submission.

Natural Justice

33. A party alleging a denial of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.
34. Zip Cartage argues the Director failed to observe principles of natural justice in making the Determination.
35. The argument first alleges a denial of natural justice arose in the failure by the Director to provide Scott's documents and argument prior to the complaint hearing. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal briefly summarized the natural justice concerns that typically operate in the context of the complaint process:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party: see *BWT Business World Incorporated*, BC EST #D050/96.

36. Provided the process exhibits the elements of the above statement, it is unlikely the Director will be found to have failed to observe principles of natural justice in making the Determination. Natural justice does not require the Director to provide every document and all of the arguments made by one party to the other party, or parties. The Director is required only to provide notice to each party that is adequate in all the circumstances and contains sufficient information to enable a party to make representations on their own behalf, to effectively prepare their own case and to answer the case they have to meet: see *Cyberbc.Com AD & Host Services Inc. (operating 108 Temp and La Pizzaria)*, BC EST # RD344/02. The requirements of natural justice in the context of the complaint process do not require the Director to provide all of the documents which a party may submit to the Director or the argument a party might make to support their position. It is clear the Appellants were afforded the procedural rights contemplated by the statement from the *Imperial Limousine Service Ltd.* case; procedural rights, I note, that are also statutorily protected by section 77 of the *Act*.
37. Zip Cartage has failed to demonstrate a breach of natural justice in the above respect.
38. Zip Cartage alleges bias. The test for determining allegations of bias has been expressed in several decisions of the Tribunal: see, for example, *Dusty Investments Inc. dba Honda North*, *supra*. Because such allegations are serious, they should not be found except on the clearest of evidence: see *A.B. Lumber Co. Ltd. and North Coast Forest Products Ltd. v. B. C. Labour Relations Board and another*, B.C.J. No. 1858, August 7, 1998, Vancouver Registry No. A980541; they should not be made speculatively. The onus of demonstrating bias or reasonable apprehension of bias lies with the person who is alleging its existence. Furthermore, a "real likelihood" or

probability of bias or reasonable apprehension of bias must be demonstrated. Mere suspicions, or impressions, are not enough.

39. The Tribunal has noted, and adopted, the following statement from the Supreme Court of Canada decision, *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484:

Regardless of the precise words used to describe the test (of apprehension of bias) the object of the different formulations is to emphasize that the threshold for a finding of real or perceived bias is high. It is a finding that must be carefully considered since it calls into question an element of judicial integrity. Indeed, an allegation of reasonable apprehension of bias calls into question not simply the *personal* integrity of the judge, but the integrity of the entire administration of justice. (emphasis added)

40. The argument and allegation made by Zip Cartage falters on the evidence. There is nothing in the appeal, and specifically there is no evidence of any kind, indicating a “real likelihood or probability” there was any bias against them by the Director during the complaint hearing. The accusation is premised on nothing more than a subjective, and totally unsupported, impression. The allegations that the Director lacked an understanding of the intertwining relationships involved and was allowed to be “manipulated” by Scott are similarly devoid of any evidentiary foundation and, as such, must be rejected.

41. I find there is no basis upon which the natural justice ground of appeal can succeed.

New Evidence

42. Zip Cartage has submitted additional evidence with this appeal.

43. The Tribunal is given discretion to accept or refuse new or additional evidence. The Tribunal has taken a relatively strict approach to the exercise of this discretion and tests the proposed evidence against several considerations, including whether such evidence was reasonably available and could have been provided during the complaint process, whether the evidence is relevant to a material issue arising from the complaint, whether it is credible, in the sense that it be reasonably capable of belief, and whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination: see *Davies and others (Merilus Technologies Inc.)*, BC EST # D171/03. New or additional evidence which does not satisfy any of these conditions will rarely be accepted. This ground of appeal is not intended to give a person dissatisfied with the result of a Determination the opportunity to submit evidence that, in the circumstances, should have been provided to the Director before the Determination was made. The approach of the Tribunal is grounded in the statutory purposes and objectives of fairness, finality and efficiency: see section 2(b) and (d) of the *Act*.

44. There are two problems with the evidence Zip Cartage seeks to include with this appeal.

45. First, it is apparent that all of this evidence existed at the time the Determination was being made. Zip Cartage submits they were not able to obtain this evidence prior to the Determination being made for reasons expressed in the appeal submission. There are, in fact, only three pieces of additional evidence to which that submission could possibly apply. There can be no doubt or confusion that the first three exhibits attached as additional evidence were available to Zip Cartage before the Determination was made and, for that reason, they will not be accepted in this appeal. In respect of the other documents included in the appeal submission, the document identified as Exhibit “E” is an agreement between Claddagh Services Inc. and “Dependant Contractor”. I note the agreement includes the signature of Ajay Chahal, the owner of Zip Cartage, on the Dependant Contractor signing line. The DC (dependant contractor) is not specifically identified in the agreement and elements of the agreement can only apply to Zip Cartage, for example, paragraph 9. In my

view, it is not credible for Zip Cartage to suggest this document was unavailable to them before the Determination was made when they clearly were party to it. Nor do I accept the document as being probative to the issue of the relationship between Zip Cartage and Scott. The documents attached as Exhibits “F” and “G” do not assist Zip Cartage in this appeal. The former does nothing more than contain comments from Ms. Cullum. It says nothing of the relationship between Zip Cartage and Scott. The latter is virtually worthless as evidence on that issue and its value to the appeal is not otherwise explained. In any event, there is nothing that indicates this document has any application at all to Scott nor does it “prove” any of the facts that Zip Cartage attributes to it.

46. Second, the facts sought to be extracted from the additional evidence represented in these exhibits, as well as in the many assertions contained throughout the appeal submission, seek to challenge findings of fact made by the Director in the Determination. Unless Zip Cartage can demonstrate the findings made by the Director in the Determination raise an error of law, the Tribunal has no authority to consider elements of an appeal that simply challenge findings and conclusions of fact in the Determination.

Error of Law

47. Zip Cartage alleges the Director erred in law. Generally, 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.

48. As previously alluded to in this decision, the *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03. The Tribunal noted in the *Britco Structures Ltd.* case that the test for establishing an error of law on this basis is stringent, requiring the appellant to show that the findings of fact are perverse and inexplicable, in the sense that they are made without any evidence, that they are inconsistent with and contradictory to the evidence or they are without any rational foundation.

49. I shall first address the argument that the Director misapplied the analysis for determining Scott’s status for the purposes of the *Act*.

50. In my view, the argument of Zip Cartage on this issue engages in a common error made by appellants by either failing to recognize or refusing to acknowledge that the “law” relating to an individual’s status under the *Act* is not determined by common law principles, but by an application of the provisions of the *Act*. In that respect, I confirm the following statement from *Project Headstart Marketing Ltd.*, BC EST # D164/98:

... I need not even concern myself with the question of the status of the individuals in question under the common law in the face of the statutory definitions contained in section 1 of the *Act*. The *Act* casts a somewhat wider net than does the common law in terms of defining an “employee”.

51. The appeal submission of Zip Cartage does not address the challenge to the Director's decision concerning the status of Scott in the context of the definition of "employee" and "employer" in the section 1 of the *Act*, which broadly defines the term "employee" to include, *inter alia*, a person "receiving or entitled to wages for work performed for another" and a person "an employer allows, directly or indirectly, to perform work normally performed by an employee". An "employer" is defined as including a person "who has or had control or direction of an employee", or "who is or was responsible, directly or indirectly, for the employment of an employee".
52. Many decisions of the Tribunal have considered the issue raised here and all have made it clear that the definition of "employee" is to be broadly interpreted and that the common law tests for employment developed by the courts are subordinate to the definitions contained in the *Act*, see, for example, *Kelsey Trigg*, BC EST # D040/03, *Christopher Sin*, BC EST # D015/96, *Jane Welch operating as Windy Willows Farms*, BC EST # D161/05 and *North Delta Real Hot Yoga Ltd. carrying on business as Bikram Yoga Delta*, BC EST # D026/12.
53. The limitations of applying the common law tests have been expressed by the Tribunal in a number of decisions, including *C.A. Boom Engineering (1985) Ltd.*, BC EST # D129/04, where the Tribunal noted:
- The common law tests originated chiefly for the purpose of determining whether an employer could be held vicariously liable for wrongs done by its employee, and not for the purpose of determining whether an employee is entitled to the minimum protections of the Act. The inadequacies of the common law tests have been noted by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983, and by the Federal Court of Appeal in *Wolf v. Canada*, 2002 F.C.A. 96.
54. That is not to say the common law tests have been ignored entirely. Common law tests are useful by reason of the fact that they delineate the factors which should be examined when considering whether, in the circumstances, an employment relationship has been created. In *Cove Yachts (1979) Ltd.*, BC EST # D421/99, the Tribunal listed a number of factors as being potentially relevant to determining whether a person is an employee or an independent contractor:
- the actual language of the contract
 - control by the employer over the "what and how" of the work
 - ownership of the means of performing the work (e.g. tools)
 - chance of profit/risk of loss
 - remuneration of staff
 - right to delegate
 - discipline/dismissal/hiring
 - right to work for more than one "employer"
 - perception of the relationship
 - integration into the business
 - intention of the parties
 - is the work for a specific task or term?

55. In a very real sense it is counter-productive to spend a significant amount of time analyzing the relationship from the perspective of common law tests. It unnecessarily complicates the issue and invites appeals such as this one. The Tribunal has repeatedly said the question of the status of a person under the *Act* is determined in the context of the definitions of “employee”, “employer” and “work”. The only appropriate “test” is whether the relationship of the putative employee and employer can be found within the relevant provisions and purposes of the *Act*.

56. Accordingly, while the common law tests remain useful in focusing attention on relevant factors, they must be applied bearing in mind the broad statutory definitions, which must in turn be interpreted in light of the policy objectives of the *Act*. The Supreme Court of Canada made the following statement in *Machtiger v. HOJ Industries Ltd.* (1992), 91 D.L.R. (4th) 491 at 507, concerning Ontario employment standards legislation, that applies equally to the *Act*:

. . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protection to as many employees as possible, is favoured over one that does not.

57. The following excerpt from *Kimberley Dawn Kopchuk*, BC EST # D049/05 (Reconsideration denied BC EST # RD114/05) succinctly and correctly summarizes the law of the *Act* when considering the issue of whether a person is an employee under the *Act*:

The common law tests of employment status are subordinate to the statutory definitions (*Christopher Sin*, BC EST #D015/96), and have become less helpful as the nature of employment has evolved (*Kelsey Trigg*, BC EST #D040/03). As a result, the overriding test is found in the statutory definitions: that is, whether the complainant “performed work normally performed by an employee” or “performed work for another” (*Web Reflex Internet Inc.*, BC EST #D026/05). Despite the limitations of the common law tests, the factors identified in them may also provide a useful framework for analyzing the issue. In *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 S.C.R. 983, in the context of the issue of vicarious liability, the Supreme Court of Canada rejected the notion that there is a single, conclusive test that can universally be applied to determine whether a person is an employee or an independent contractor. Instead, the Court held, at paras. 47-48:

The central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account. In making this determination, the level of control the employer has over the worker’s activities will always be a factor. However, other factors to consider include whether the worker provides his own equipment, whether the worker hires his or her own helpers, the degree of financial risk taken by the worker, the degree of responsibility for investment and management held by the worker, and the worker’s opportunity for profit in the performance of his or her own tasks.

It bears repeating that the above factors constitute a non-exhaustive list and there is no set formula as to their application. The relative weight of each will depend on the particular facts and circumstances of the case.

58. Applying the above, I find the Director did not err in law on the issue of Scott’s status under the *Act*. The Director clearly and correctly noted that determining whether a person is an employee for the purposes of the *Act* is guided by the definitions of “employer” and “employee” found in section 1. In the context of the provisions in the *Act*, the Director found Scott performed work and was directed and controlled in this work by Zip Cartage. This conclusion was a finding of fact, not the application of any “test” that determines if a person is an employee under the *Act*.

59. If the Director committed any error in the Determination, it was in elevating an examination of the facts of the relationship to a consideration of the common law tests the Tribunal has found are not determinative of employment status for the purposes of the *Act*.
60. However, on a fair and reasonable reading of the Determination it is apparent the Director identified and considered several of the factors evolving from common law tests the Tribunal has identified as being potentially relevant, including the language of the contract, the degree of control over the work, the chance of profit, risk of loss, ownership of the means of performing the work, the degree of integration and whose business is it. Viewed in this respect, the Director approached the issue in the manner required by the *Act* and endorsed by the Tribunal. As well, in my assessment of the available evidence, the decision of the Director was absolutely correct.
61. A conclusion on the above factors was determined on findings of fact. This appeal does nothing more, at its core, than express disagreement with those findings and seek to have the Tribunal revisit the Determination and reach a different conclusion on them.
62. In other words, the question raised on this issue is, in reality, whether or not the Director erred in respect to the facts. As noted above, this is a question over which the Tribunal has no jurisdiction. In respect of the facts, I am not persuaded there is any error of law in respect of the findings made by the Director on this issue. There was evidence on which the Director could reasonably arrive at the decision made. Accordingly, I find no error of law in how the Director approached the available facts. Additionally and in any event, as noted in *Britco Structures Ltd., supra*, the application of the law, correctly found, to allegedly erroneous errors of fact does not convert the issue into an error of law. I am unable to extricate a question of law from the question Zip cartage seeks to have answered. The Director's approach to an examination of the issue, even if somewhat over-inclusive, was correct in law and was sufficiently grounded in the facts.
63. Similarly, I am not persuaded there was any error of law in calculating the wages owed to Scott. This exercise was also one requiring findings of fact. There were facts provided to the Director upon which the findings made could reasonably be based. Zip Cartage has not demonstrated there is a reviewable error.
64. There is no basis for finding the Director erred in law in making the Determination.
65. In sum, I am not persuaded there is any reasonable prospect this appeal can succeed. The purposes and objects of the *Act* would not be served by requiring the other parties to respond to it.
66. The appeal is dismissed.

ORDER

67. Pursuant to section 115 of the *Act*, I order the Determination dated August 1, 2014, be confirmed in the amount of \$5,726.17, together with any interest that has accrued under section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal