

An appeal

- by -

B.B.K. Contracting Ltd.

- 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 Ann Hart

FILE No.: 2007A/94

DATE OF DECISION: November 28, 2007

THE FACTS

7. James Wannop was employed as a silviculture worker for B.B.K. Contracting Ltd., which operates a silviculture business, from June 28, 2006 until he quit on July 25, 2006.

ARGUMENT

For the Appellant

8. B.B.K. Contracting Ltd. asserts it did not contravene the *Act*, and Mr. Wannop had received all amounts owing to him before he filed his claim.
9. Mr. Khila submitted that Mr. Wannop had not been honest, accurate or consistent in the information he provided in his complaint and to the Delegate. He had signed the Daily Sheets agreeing to the deductions from his wages for accommodation, machine rental and food.

For the Director

10. The Delegate submitted that the appellant had not provided clear evidence that there had been a denial of natural justice. The record of the investigation showed that B.B.K. Contracting Ltd. had been given plenty of time to review and respond to the complaint. The signed Daily Sheets and all other documentation provided by the B.B.K. Contracting Ltd. were considered by the Delegate in preparing the Determination.
11. The contention of B.B.K. Contracting Ltd. that all amounts owing to Mr. Wannop had been paid to him was not correct. The Delegate submitted that B.B.K. Contracting Ltd. was simply attempting to re-argue the facts of the case. The Determination should be confirmed.

ANALYSIS

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; or
 - (c) evidence has become available that was not available at the time the determination was being made
12. The burden rests with the appellant, in this case the employer, to establish an error in the Determination such that I should vary or cancel the Determination.
 13. The Appeal Form and documentation provided by the employer does not specifically describe how Mr. Khila is of the view that the Delegate failed to observe the principles of natural justice. Clearly, Mr. Khila takes issue with the findings made by the Delegate in the Determination which he believes were erroneous and unfair.

14. Mr. Khila noted in his submission dated August 23, 2007 that “...*the employee John-James Wannop provided the Director with different information as time went on. Example of this was the start date of the job, which was June 28, 07 not June 22, 07*”
15. In the Determination, the Delegate wrote that Mr. Wannop was unable to recall his exact days / hours worked and hectares cut per block. Mr. Wannop advised the Delegate that he accepted the employer’s records as accurate. As a result, the records of days / hours worked and hectares cut were not in dispute.
16. In his submission dated October 3, 2007 Mr. Khila alleged that “*John James Wannop, in his complaint was not honest, accurate or consistent when giving his information*”. As one example, Mr. Khila wrote that Mr. Wannop had July 30, 2007 off. In the Determination, the Delegate used the employer’s records, noting that Mr. Wannop had accepted them as correct, and it was not recorded that Mr. Wannop had worked on July 30, 2007. Mr. Khila also wrote about Mr. Wannop’s work on July 21, 22, and 24, 2007 and his days of work in Blue River, and submitted additional documentation in relation to this with his appeal. Again, the employer’s records were relied upon by the Delegate in the Determination, and those appear to be entirely consistent with what Mr. Khila wrote in his submission of October 3, 2007. All of the information Mr. Khila has provided with his appeal was submitted to the Delegate for his consideration during the investigation.
17. Mr. Khila also indicated that he disputed the conclusion by the Delegate that the deductions from Mr. Wannop’s wages for machine repair and food were unauthorized. Mr. Khila argued that Mr. Wannop had signed the Daily Sheets agreeing to those deductions. In the Determination, the Delegate gave careful consideration to the arguments of B.B.K. Contracting Ltd., and provided extensive reasons for his conclusion that the employer was not entitled to deduct the cost of food and machine repair from Mr. Wannop’s wages.
18. It is not appropriate for the Tribunal to interfere with the findings of fact made by the Director if they do not amount to the kind of errors contemplated by s.112, even if the Tribunal might not have reached the same findings of fact. In the Determination, the Delegate outlined the submissions of the parties in sections entitled *Argument and Evidence of the Complainant* and *Argument and Evidence of the Employer*. The documentation on the file shows that there was evidence to support the findings and conclusions reached by the Delegate.
19. Mr. Khila referred in his submissions to the Determination being sent to B.B.K. Contracting Ltd. which was “*later revised*”. The Delegate explained in his submission that the document to which Mr. Khila was referring was a letter dated April 2, 2007 in which the Delegate summarized his “*preliminary finding on the wage issues*”. At the last page of that letter the Delegate wrote in part as follows: “*If...you have evidence to dispute the above allegations, please forward in **writing** your reasons, along with any other supporting documentation regarding the complainant.*”
20. The Delegate noted in his submission for the appeal dated September 10, 2007 that B.B.K. Contracting Ltd. had responded to the letter by telephoning the Delegate on three separate occasions. It was only after the Delegate considered the evidence and submissions of the parties in response to that letter that the Determination was actually issued.
21. An appeal to the Tribunal is not a re-investigation of the complaint or an opportunity to re-argue the case. There is no evidence that the investigation process conducted by the Delegate was unfair. The

parties had the opportunity to present documents and explain their positions. There is no evidence of a denial of natural justice on the Appeal Form, or in the materials filed with these appeals.

22. B.B.K. Contracting Ltd. disagrees with the findings of fact the Delegate made but does not disclose an error in law or failure to observe the principles of natural justice in making the Determination. While errors of fact may, in certain instances, amount to errors in law there is no substantial error of fact in this case that would amount to an error in law.
23. As it was not established that the Delegate had failed to observe the rules of natural justice, the appeal is dismissed.

ORDER

24. Pursuant to Section 115 of the Act, the Determination dated July 26, 2007 is confirmed together with any interest which may have accrued since that time.

Carol Ann Hart
Member
Employment Standards Tribunal