



An appeal

- by -

Nirmal S. Randhawa
a Director or Officer of Dine Enterprises Ltd. carrying on business as Louie's Sub
(the "Employer")

- 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: Sheldon M. Seigel

FILE No.: 2009A/121

DATE OF DECISION: November 9, 2009

DECISION

SUBMISSIONS

Nirmal S. Randhawa

on his own behalf

Joy Archer

on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the Employment Standards Act (the “*Act*”) brought by the Employer, of a Determination that was issued on August 6, 2009 by a delegate of the Director of Employment Standards (the “Director”). The Employer operated a sandwich shop, and the Employee worked at the establishment. The Determination found that the Employer had contravened sections 40, 58, 63, and 88 of the *Act*, by failing to pay overtime, vacation pay, and compensation for length of service, as well as accrued interest for a total of \$3,870.09. The Director also determined that administrative penalties were due and she ordered a total payment of \$2,000.00 in such penalties for a total owing by the Employer of \$5,870.09.
2. The Employer submits that the Director failed to observe the principles of natural justice in making the Determination.
3. The Employer seeks a change in the Determination, a cancellation of the Determination, or a referral back to the Director of Employment Standards.

ISSUE

4. The issue in this appeal is whether the Director failed to observe the principles of natural justice in making the Determination.

ARGUMENT

5. The Employer’s reasons for appealing include:
 - The Employee was aware that she was not going to receive overtime pay when she agreed to the terms of her employment.
 - The Employee failed to allow the Employer to hire other employees to work for times when the Employee claimed overtime entitlement.
 - The Employer provided notice of termination to the Employee consistent with its ability, in light of the business difficulties.
 - The business is no longer in operation and the Employer is not able to work or pay the amount ordered by the Director.
 - The Employer agreed with the Employee to a settlement of outstanding matters between them but miscommunication made the fulfillment of that settlement impossible.

6. The Employee presents no submissions.
7. The Director presents submissions dated October 6, 2009 that address the Employer's appeal submissions subject by subject and concludes:

[The Employer] has not provided the Tribunal with any new and relevant information that was not available during the investigation, but rather is attempting to seek relief from the wages determined outstanding by trying to reargue the same points he argued prior to the issuance of the corporate determination.

ANALYSIS

8. The Appellant was one of the owners and operators of a sandwich shop that went out of business. A review of the file indicates that the Employer was fully informed of the Employee's complaints and of the issues of director's liability by way of telephone calls and correspondence with the Director. When the Director became concerned about whether the Employer fully comprehended all of the issues, the Employer provided a representative to communicate with the Director on its behalf. The representative was a relative and one involved in the business, and was therefore able to understand the relevance of both the Employer's liability and the facts relating to the sandwich shop. The Director is quite clear and methodical in her recording of matters related to the communication with the Employer and its chosen representative.
9. I find that the record makes it clear that the Employer was fully informed and able to understand the process and the substance of the allegations and findings made against it. I find also that the Director was quite thorough about providing information about the law of director's liability as it applied to the Employer.
10. The Employer was invited to and allowed the opportunity to participate in the Director's investigation process, and did so to some extent. Many of the facts were admitted and agreed to by both Employer and Employee. The Employer also chose to disagree with the demands made by the *Act*, and made that clear to the Director.
11. Following the Director's investigation, a settlement was reached but the parties did not agree as to a payment plan for monies that were to flow from the Employer to the Employee. As a result, the Director quite properly was forced to proceed toward the issuance of the Determination. I find the record confirms that these circumstances were communicated to the Employer and the Employer was allowed an opportunity to respond. The Employer did not deliver the funds as required by the settlement, and the Determination was issued.
12. The Employer presents several reasons for appealing, which appear to be restatements of facts or submissions from the Determination.
13. I find that the Employer was provided with reasonable accommodation in terms of process, and that the Director made reasonable efforts to communicate with and educate the Employer with respect to the Employer's obligations under the *Act* and the process of investigating the complaint and issuing the Determination. The Director also appears to have made considerable effort to resolve the complaint between Employer and Employee and despite the appearance of success, was met with resistance and reluctance to comply with an apparent agreement, on the part of the Employer.
14. There is ample evidence in the body of the Determination that the decision was based on a weighing of the relevant evidence. I find little evidence to support the proposition that the Determination was based on less than all of the evidence or submissions provided to the Director, or that the Director failed to do anything

that she should have done in the circumstances to effect a fair and reasonable investigation and Determination. Further, I am not persuaded that the Director failed to observe the principles of natural justice. This is a procedural ground that under some circumstances requires an examination of the material put before the adjudicator. It is not, however, an opportunity to re-argue the same substantive issues before a second adjudicator. I find that the Director sought and collected sufficient relevant information pertaining to the complaint to make an informed decision. There is no evidence that the Director was in any manner biased or failed to allow the Employer to respond to the complaint against it. The provisions of the *Act* were followed. There is no evidence of procedural irregularity.

15. I have no jurisdiction to consider as relevant, the ability of the Employer to pay an amount found to be payable by a Determination.
16. I find that there was no breach of natural justice occasioned by the procedures relating to the Determination, or the substance of the Determination. The Appeal fails.

ORDER

17. Pursuant to section 115 of the *Act*, I confirm the Determination dated August 6, 2009.

Sheldon M. Seigel
Member
Employment Standards Tribunal