

An appeal

- by -

0697655 B.C. Ltd., carrying on business as the Rocking Horse Pub

- 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 Seigel

**FILE No.:** 2008A/116

**DATE OF DECISION:** December 11, 2008

## DECISION

### SUBMISSIONS

David Willoughby and Karin Willoughby      on behalf of 0697655 B.C. Ltd. Carrying on Business as the Rocking Horse Pub (the “Employer”)

Kristine Booth      on behalf of the Director

### 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 September 5, 2008 by a delegate of the Director of Employment Standards (the “Determination”). The Employer is a pub, and the Employee a dish-washer. The Determination found that the Employer had contravened sections 63 and 88 of the *Act*, by failing to pay compensation for length of service and accrued interest. The Director also determined that an administrative penalty was due and she ordered a total payment of \$602.82.
2. The Employer submits that the Director failed to observe the principles of natural justice in making the Determination.
3. The Employer seeks a cancellation of the Determination.

### 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 are:
  1. No hearing was scheduled.
  2. The employee presented no witnesses.
  3. The decision was based entirely on the Employee’s perception of “truth or lies.”
  4. Evidence provided by the Employer’s witness, Oxtoby, was disregarded.
  5. The appellants feel that the Employment Standards Branch treated them unfairly.
6. The Employer presents several other *reasons for appealing*, which appear to be restatements of facts or submissions from the Determination.

7. The Employee presents submissions that address the original substantive content of the matter resolved by the Determination, written submissions by a witness to similar events, and a number of pages of diary entries consistent with his position as portrayed in the Determination.
8. The Director presents submissions dated December 21, 2008 that address the Employer's appeal submissions on a paragraph-by-paragraph basis and concludes:

The Rocking Horse Pub was made aware of the complaint against them, participated in the investigation by providing verbal and written evidence, made aware that a determination was going to be made on the best available evidence, and the decision was made by an unbiased decision-maker.

## ANALYSIS

9. The appellants are the owners and operators of the Employer. A review of the file indicates that each of the appellants was informed of the details of the complaint. They were invited to and allowed the opportunity to participate in the Director's investigation process. The Director communicated with the Employer with thorough notification of the nature of the complaint and requests for evidence and submissions by way of multiple telephone calls, correspondence by facsimile and registered mail, and a meeting with the employers at the Nanaimo Employment Standards Branch office.
10. Sections 76 and 77 of the *Act* require the Director to accept a complaint, investigate the complaint and allow the person under investigation to respond to the complaint. There is no requirement for a hearing and natural justice does not require a hearing in all circumstances. I find the simple fact that a hearing was not conducted is not a breach of natural justice. I am satisfied that the Employer knew the nature of allegations against it and was given adequate opportunity to respond to those allegations before a Determination was made.
11. Whether or not the Employee presented witnesses is not in itself relevant to administrative fairness or natural justice. The file confirms that both the Employee and his mother provided information related to the complaint to the Director. The Director shared that information with the Employer, asked the Employer for its response to that information, and accepted the Employer's responses on multiple occasions.
12. The Determination describes the Employer's position in detail and sets out point-by-point why the Employer's submissions are not sufficient to satisfy the Director that the Employer had fulfilled its obligations under the *Act*. There is ample evidence in the body of the Determination that the decision was based on a weighing of the relevant evidence. I find no evidence to support the proposition that the Determination was based on less than all of the evidence or submissions provided to the Director. Further, I find no evidence to support the proposition that the Director disregarded evidence put forth on behalf of the Employer.
13. The stated ground of appeal was 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.

14. I find that natural justice was served by the procedures relating to the Determination. The Appeal fails.

### **ORDER**

15. Pursuant to section 115 of the Act, I confirm the Determination.

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**Sheldon Seigel**  
**Member**  
**Employment Standards Tribunal**