

An application for suspension

- by -

Rite Style Manufacturing Ltd.
("Rite Style")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

Pursuant to section 113 of the
Employment Standards Act R.S.B.C. 1996, C. 113 (as amended)

TRIBUNAL MEMBER: Carol L. Roberts

FILE No.: 2011A/149

DATE OF DECISION: November 16, 2011

DECISION

SUBMISSIONS

Parminder Singh	on behalf of Rite Style Manufacturing Ltd.
Gurnavdeep Sagoo	on his own behalf

OVERVIEW

1. Rite Style Manufacturing Ltd. (“Rite Style”) has appealed a Determination of the Director of Employment Standards (the “Director”) issued August 26, 2011, ordering it to pay \$1,527.62, representing wages and accrued interest owed to a former employee and an administrative penalty in the amount of \$500.00 for a contravention of section 63 of the *Employment Standards Act* (the “Act”).
2. Rite Style appealed the Determination on September 30, 2011, contending that the Director had failed to observe the principles of natural justice in making the Determination. Rite Style also seeks a suspension of the Determination pursuant to Section 113 of the *Act* pending the outcome of its appeal.
3. This decision addresses only the suspension request.

FACTS AND ARGUMENT

4. Mr. Sagoo filed a complaint alleging Rite Style failed to pay compensation for length of service. The issue before the Director was whether or not Mr. Sagoo had quit his job or was fired. After hearing oral evidence from a number of parties, the Director’s delegate ultimately concluded that Mr. Sagoo had not quit his employment and that he was entitled to compensation for length of service.
5. Rite Style contends that Mr. Sagoo provided false information and that the delegate ignored certain facts and evidence. Rite Style also appears to say that the Director arrived at conclusions not supported by the evidence.
6. Rite Style deposited the full amount of the money set out in the Determination with its appeal.
7. Mr. Sagoo disputes the allegations advanced by Rite Style and opposes the suspension application.

ANALYSIS

8. Section 113 of the *Act* provides as follows:
 - (1) A person who appeals a determination may request the Tribunal to suspend the effect of the determination.
 - (2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
 - a) the total amount, if any, required to be paid under the determination or,
 - b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.

9. The Tribunal will not suspend the effect of a Determination in circumstances where the grounds of appeal are frivolous or have no apparent merit; however it may suspend where the appeal may have some merit. (*Tricom Services Inc.*, BC EST # D420/97; *TNL Paving Ltd.*, BC EST # D397/99)
10. Rite Style's submissions on appeal appear to be nothing more than an attempt to re-argue the case it advanced before the Director at the hearing. However, I am unable to conclude that the grounds of appeal are frivolous or have no apparent merit. That is a matter ultimately to be decided by the Tribunal.
11. Given that the Director has taken no position on the suspension application and Rite Style has deposited the full amount of the Determination pending the outcome of the appeal, I conclude that a suspension order should be granted.

ORDER

12. Pursuant to section 113 of the *Act*, I allow the application to suspend the Determination.

Carol L. Roberts
Member
Employment Standards Tribunal