

An appeal

- by -

Pebble Creek Management Inc.  
(“Pebble Creek”)

- 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.:** 2011A/146

**DATE OF DECISION:** November 16, 2011

## DECISION

### SUBMISSIONS

Rhoda Chilcott on behalf of Pebble Creek Management Inc.  
Gagan Dhaliwal on behalf of the Director of Employment Standards

### OVERVIEW

1. This decision addresses an appeal filed under Section 112 of the *Employment Standards Act* (the “*Act*”) by Pebble Creek Management Inc. (“Pebble Creek”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on August 16, 2011.
2. The Determination was made in respect of a complaint filed by Aaron Craig (“Craig”), who alleged Pebble Creek had contravened the *Act* by failing to pay regular wages, overtime wages and length of service compensation.
3. The Determination found that Pebble Creek had contravened Part 3, section 18, Part 4, section 40, Part 7, section 58 and Part 8, section 63 of the *Act* and ordered Pebble Creek to pay Craig an amount of \$1,361.57, an amount which included wages and interest.
4. The Director also imposed administrative penalties on Pebble Creek under Section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) in the amount of \$1,000.00.
5. The total amount of the Determination is \$2,361.57.
6. In this appeal, Pebble Creek says the Director failed to observe principles of natural justice in making the Determination and seeks to have the Determination varied.
7. The Tribunal has statutory authority to hold any combination of written, electronic and oral hearings on an appeal (see section 103 of the *Act* and section 36 of the *Administrative Tribunals Act*). Appeals to the Tribunal are not *de novo* hearings and the statutory grounds of appeal are narrow in scope. Typically, the Tribunal will decide an appeal with a written hearing – one based on the Determination, the written submissions of the parties, the material in the section 112(5) “record” and any additional evidence allowed by the Tribunal to be added to the “record”. The Tribunal has decided this appeal can be decided with a written hearing.

### ISSUE

8. The issues in this appeal are whether Pebble Creek has demonstrated the Director failed to observe principles of natural justice in making the Determination and, if so, whether the Determination ought to be varied as requested in the appeal.

### THE FACTS

9. Pebble Creek operates a furniture manufacturing business. Craig worked for Pebble Creek as a furniture assembler at a rate of \$14.00 an hour. His employment was terminated on November 18, 2010.

10. Craig filed a complaint under the *Act*, alleging Pebble Creek had failed to pay all regular and overtime wages owed to him and that Pebble Creek had terminated his employment without cause, notice or compensation in lieu of notice.
11. The Director conducted a complaint hearing on June 1, 2011. At the outset of the hearing, the issue of regular hours was resolved, leaving only the overtime and length of service compensation claims to be addressed by the Director.
12. Evidence was received by the Director on those two matters. In respect of the overtime issue, Craig said he had not kept a record of the hours he worked, but had recorded his overtime hours on his time cards. Pebble Creek did not have the time cards for Craig at the complaint hearing, indicating they had been unable to locate them. The Director requested the time cards be located and provided and confirmed this request in a letter to Pebble Creek dated June 16, 2011. The time cards for Craig, as well as a sampling of time cards for other employees, were received by the Director from Pebble Creek on July 5, 2011. This information was sent to Craig for his response, which was provided to the Director on August 5, 2011.
13. The Director accepted the hours of work shown on the time cards as the best evidence and used them to find Craig was entitled to overtime wages and to calculate overtime hours and wages.
14. The Director did not accept all Craig's overtime claim, denying that part of the claim related to his allegedly working through his lunch breaks. The Director could find no evidence to support this part of his claim.
15. The reasoning for the Director's findings and the calculations are set out in the Determination.
16. The Director found Craig was entitled to length of service compensation. Pebble Creek does not challenge that finding.

## **ARGUMENT**

17. The appeal filed by Pebble Creek is, in a word, succinct, consisting of a completed appeal form and an accompanying explanation comprising two paragraphs: the first stating an intention to appeal the Determination, "based on the fact that Mr. Craig was paid in full 48 hours after he was fired from his position"; and "to appeal the Overtime that he was awarded"; the second indicating the length of service compensation was not being appealed.
18. The first paragraph also states Pebble Creek's view that Craig was paid in full for the overtime he provided and the opinion that "he has made his own hours" and submitted them.
19. The Director has responded to the appeal. That response is equally succinct, indicating the Determination was based on time cards submitted by Pebble Creek, not Craig, that Pebble Creek was given the opportunity to respond to the claims made and the evidence presented by Craig and that the Director had considered and weighed all of the evidence provided by the parties in making the Determination.

## **ANALYSIS**

20. As a result of amendments to the *Act* which came into effect on November 29, 2002, 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 made.*

21. The Tribunal has consistently indicated that an appeal under the *Act* is intended to be an error correction process, with the grounds of review identified in section 112 and the burden of persuasion being on the appellant to identify the error on one of those grounds.

22. Pebble Creek has alleged a failure by the Director to observe principles of natural justice. Parties 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).

23. The Tribunal recognizes persons without legal training do not always appreciate what “natural justice” means, and the concept can be confusing and complex to a lay person. Generally, the notion of “natural justice” requires a decision maker to provide all of the parties with a fair opportunity to be heard and to not interfere with that opportunity in an unfair or inappropriate way. As the Tribunal stated in *Imperial Limousine Service Ltd.*, BC EST # D014/05:

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).

24. There is no evidence in this case that Pebble Creek was not provided an opportunity to know the claim being made by Craig and an opportunity to present their position on that claim. In fact, the evidence indicates Pebble Creek was given the opportunity required under section 77 of the *Act* and by the principles of natural justice. There are no submissions in the appeal specific to the natural justice ground. I find, therefore, that Pebble Creek has failed to meet the onus of demonstrating on a balance of probabilities that the Director failed to observe principles of natural justice in making the Determination.

25. At its core, however, this appeal is not about principles of natural justice at all, but is about a disagreement by Pebble Creek with the factual conclusion of the Director that Craig had worked overtime hours and was entitled to overtime wages. 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 error of law must be apparent on the face of the Determination and the material on file or arise out of evidence that is allowed under section 112(1) (c).

26. The conclusion made in the Determination followed an analysis of the evidence presented by the parties during the complaint process and is rationally supported on the facts and the law. While I appreciate that Pebble Creek disagrees with the ultimate conclusion, it is not shown that any of the factual findings and

conclusions were made without any evidence at all or were perverse and inexplicable or that the Director misapplied the law of the *Act* in some way.

27. In response to the view taken by Pebble Creek that Craig was paid in full 48 hours after he was fired, that position cannot be sustained based simply on the indisputable fact that the Determination finds there are wages – in the form of overtime wages and length of service compensation – which were owed to Craig but not paid within 48 hours after his termination.
28. In sum, Pebble Creek has failed to show a failure by the Director to observe principles of natural justice in making the Determination or that the Director reached conclusions on the overtime claim that are reviewable by the Tribunal under section 112 of the *Act*.
29. The appeal is dismissed.

### **ORDER**

30. Pursuant to Section 115 of the *Act*, I order the Determination dated August 16, 2011, be confirmed in the amount of \$2,361.57, together with any interest that has accrued under Section 88 of the *Act*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**