

An appeal

- by -

G. Mann Trucking 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: Sheldon M. Seigel

FILE No.: 2009A/131

DATE OF DECISION: December 11, 2009

DECISION

SUBMISSIONS

Gursaran Mann	on behalf of G. Mann Trucking Ltd.
Gagan Dhaliwal	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 G. Mann Trucking Ltd. (the “Employer”), of a Determination that was issued on August 31, 2009, by a delegate of the Director of Employment Standards (the “Director’s delegate”). The Employer operates a trucking business and the Employee was employed as a truck driver for the establishment. The Determination found that the Employer had contravened sections 18, 40, 58, and 88 of the *Act*, by failing to pay wages, overtime, vacation pay, and accrued interest for a total of \$748.07. The Director’s delegate also determined that administrative penalties were due and she ordered a total payment of \$1,000.00 in such penalties for a total owing by the Employer of \$1,748.07.
2. The Employer submits that the Director failed to observe the principles of natural justice in making the Determination. Some of the Employer’s submissions appear to suggest that the Director also made an error of law. I will proceed on this appeal as though each of those submissions were specified.
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 or made one or more errors in law.

ARGUMENT

5. The Employer’s reasons for appealing include:
 - The Employee moved his truck in which he was living to the location where the work truck was parked overnight. Therefore some of his time lodged should be classified as commute time rather than billable travel time.
 - The Employee used the Employer’s fuel charge card for his own purposes and therefore owes compensation back to the Employer.
 - The Employer overpaid the Employee for statutory holidays as documented in the pay records.
 - The Employee sought to extort funds from the Employer after their employment relationship had ended.

- The Employee failed to attend at a scheduled mediation between the parties and presided over by the Director's delegate. Following that failed mediation the Director's delegate reached conclusions contrary to the interest of the Employer "based on her own assessments" and without taking the Employer's position into account.

6. The Employee presents no submissions.
7. The Director's delegate presents submissions dated October 23, 2009, that address the Employer's appeal submissions subject by subject and concludes:

I believe that the principles of natural justice were observed and the Employment Standards Act was correctly applied.

8. The Director's delegate also provides a copy of the Record.

ANALYSIS

9. I have reviewed the Determination and the Record with respect to the issue of travel vs. commute time. The Director's delegate spends a considerable portion of the Determination reviewing and weighing the evidence of both parties in this respect. She concludes:

The employer and the complainant have conflicting claims as to where [the employee] was living at various times during his employment with [the employer]. I find it unnecessary to make a finding on this as I find that [the employee] was driving a vehicle to the worksite which he was required to use while completing his work. Therefore the time it took for him to drive the vehicle to the worksite and the time it took for his to return the vehicle to the truck yard or the shop is considered work as he was providing a service to his employer during this time.

10. The Director's delegate then correctly describes the truck yard and the shop as a "marshalling point". She correctly concludes that the Employee is entitled to be paid wages for the travel time thus described. I find the Director's delegate made no error in law in this portion of the Determination.
11. The Director's delegate reviews the evidence before her with respect to the allegation that the Employee owed the Employer money for "stolen diesel fuel". She considers the pay statements and notes:

On the pay statement for the pay period ending January 31, 2009, the employer has made a deduction for this amount and the complainant has authorized the deduction by signing for it.

12. The Director's delegate confirms the resolution of this matter by cross-referencing the complainant's hours worked to the hours that appear on the pay statement. I find the moneys used for diesel for the Employee's personal use were repaid by a corresponding deduction in pay. The Director's delegate applied the principles of natural justice and made no error in law in so determining.
13. With respect to an alleged overpayment to the Employee for statutory holidays, the Director's delegate considers all of the evidence before her, applies that evidence correctly to the *Act*, and makes a finding that is inescapable based on the evidence before her. I note here that where the evidence of the Employer was inconsistent with the evidence and allegations of the Employee, the Director's delegate provided advance notice of her "preliminary findings" and invited the Employer to provide further submissions clarifying his position. He either declined to do so by saying that he was too busy or that the Director's delegate could make up her own mind about what happened. Ultimately, the Director's delegate considered the evidence,

weighed it, and assessed credibility in a clear and unambiguous manner and reached conclusions supported by thorough reasoning.

14. 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's delegate was quite thorough about providing information about the law of director's liability as it applied to the Employer. Unfortunately, the Employer was less than forthcoming with information to support his position, despite being allowed generous opportunity to do so by the Director's delegate. The Director's delegate found some of the evidence provided by the Employer to be self-serving and inconsistent with other evidence. She concluded on the evidence before her that the Employer's evidence was less credible than that of the Employee to the extent that they were inconsistent with one another. On a review of her reasons in the Determination I find that the conclusions of the Director's delegate are reasonable and well supported.
15. I find that there was no breach of natural justice occasioned by procedures relating to the Determination or the substance of the Determination. I find further that there is no indication on the Record or the Determination that the Director's delegate made any error in law. The Appeal fails.

ORDER

16. Pursuant to section 115 of the *Act*, the Determination dated August 31, 2009, is confirmed.

Sheldon Seigel
Member
Employment Standards Tribunal