

An appeal

- by -

Zeljko Dragicevic
("Mr. Dragicevic")

- 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: Carol L. Roberts

FILE No.: 2015A/132

DATE OF DECISION: December 10, 2015

DECISION

SUBMISSIONS

Zeljko Dragicevic on his own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Zeljko Dragicevic (“Mr. Dragicevic”) has filed an appeal of a Determination issued by a delegate (the “delegate”) of the Director of Employment Standards (the “Director”) on September 2, 2015.
2. On June 17, 2014, Mr. Dragicevic filed a complaint with the Director of Employment Standards alleging that Roots Goods Carrier Ltd. (“Roots”) contravened the *Act* in failing to pay him wages.
3. A delegate of the Director concluded that Mr. Dragicevic’s complaint was filed out of time and exercised his discretion not to investigate the complaint.
4. Mr. Dragicevic contends that the Director failed to observe the principles of natural justice in making the Determination. He also says that evidence has become available that was not available at the time the Determination was issued.
5. Section 114 of the *Act* and Rule 22 of the Tribunal’s *Rules of Practice and Procedure* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria.
6. These reasons are based on Mr. Dragicevic’s written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination. If I am satisfied that the appeal, or part of it, has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, Roots and the Director may be invited to file further submissions. If the appeal is not meritorious, it will be dismissed.

ISSUE

7. Whether or not Mr. Dragicevic has demonstrated any statutory ground of appeal.

FACTS AND ARGUMENT

8. Mr. Dragicevic worked for Roots, a trucking company, from August 21, 2014, until he quit on December 3, 2014. Mr. Dragicevic filed his complaint with the Employment Standards Branch (the “Branch”) on June 17, 2015. (I note that although the complaint was dated June 15, 2015, it was not received at the Branch until June 17, 2015). He said that he misunderstood the time he had to file his complaint, believing that he had six months from the end of his last pay period to do so. He also said that, based on several conversations he had with Roots, he kept hoping that he would be paid the money he was requesting.
9. The delegate noted that, under section 74 of the *Act*, Mr. Dragicevic’s complaint had to be filed by June 3, 2015. As it was filed on June 17, 2015, it was filed beyond the statutory time frame provided in the *Act*.

10. Having found the complaint filed out of time, the delegate considered whether or not he should exercise his discretion to extend the time.
11. The delegate noted that Mr. Dragicevic had all the necessary information about the time requirements and found that being unaware or misunderstanding the requirements were not compelling reasons to continue an investigation when a complaint was filed out of time.
12. The delegate decided not to investigate the complaint.

Argument

13. Mr. Dragicevic acknowledges that he was two weeks late filing his complaint. However, he says that he is in Canada on a work visa and his English is very poor. He said that he understood the deadline for filing a complaint was 6 months from the end of his last pay period, which was December 31, 2014, not the last day worked.
14. He contends that he is entitled to wages and that he called his employer on many occasions and believed he would be paid. He says he should be paid what he is entitled to for the work he performed.

ANALYSIS

15. Section 112(1) of the *Act* provides that a person may appeal a determination on 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 being made.
16. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
17. Although Mr. Dragicevic alleges a failure to comply with principles of natural justice as the ground of appeal, his written submissions are, in essence, an assertion that the delegate's conclusion is wrong.
18. In *J.C. Creations Ltd.* (BC EST # RD317/03), the Tribunal concluded that, given the purposes and provisions of the legislation, it is inappropriate to take an "overly legalistic and technical approach" to the appeal document: "The substance of the appeal should be addressed both by the Tribunal itself and the other parties, including the Director. It is important that the substance, not the form, of the appeal be treated fairly by all concerned."
19. The Tribunal recognizes that parties without legal training often do not appreciate what natural justice means. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker. Natural justice does not mean that the delegate accepts one party's notion of "fairness."
20. I am satisfied that Mr. Dragicevic knew the case he had to meet and a full opportunity to present all relevant evidence. On August 5, 2015, a delegate [not the delegate who issued the Determination] sent Mr. Dragicevic a registered letter informing him that the complaint was filed outside the six-month time limit and attached relevant section of the *Act* for his reference. The delegate indicated that, before she could proceed with

investigating his complaint, she had to make a decision about whether or not to extend the time period. The delegate asked Mr. Dragicevic for an explanation for why he had failed to file his complaint within the six-month period and sought details of efforts he made to resolve his complaint within that time, including any contact with the Branch.

21. Mr. Dragicevic's response to the delegate's questions was that he had misunderstood the process. He stated that he understood that he was to send the Branch's Self Help Kit to the employer within six months, and if it was not resolved, to pursue the complaint with the Branch. Mr. Dragicevic also said that he hoped he would receive money from Roots, and that Roots had promised him money each time he had spoken with them.
22. I find that the delegate informed Mr. Dragicevic of the case he had to meet, and that he was given an opportunity to respond. I find no merit to this ground of appeal.
23. The "new evidence" submitted on appeal was before the delegate at the time the Determination was made. I also find no basis for this ground of appeal.
24. I understand Mr. Dragicevic's argument to be that the Determination is wrong. Although Mr. Dragicevic does not address the merits of the delegate's decision to deny him an extension of time in which to file the complaint, I have considered whether the delegate properly exercised his discretion in deciding whether to stop investigating the complaint on the grounds that it was not filed within the statutory time limit, which would be considered an error of law.
25. In *Jody L. Goudreau et.al.* (BC EST # D066/98) at page 4, the Tribunal set out the circumstances under which it would interfere with the Director's exercise of discretion:

The Tribunal will not interfere with the exercise of discretion unless it can be shown the exercise was an abuse of power, the Director made a mistake in construing the limits of her authority, there was a procedural irregularity or the decision was unreasonable. Unreasonable, in this context, has been described as being:

... a general description of the things that must not be done. For instance, a person entrusted with discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and is often said, to be acting unreasonably. **Associated Provincial Picture Houses v. Wednesbury Corp.** [1948] 1 K.B. 223 at 229

Absent any of these considerations, the Director even has the right to be wrong.

26. In *Joda M. Takarabe et. al.* (BC EST # D160/98), the Tribunal relied on *Boulis v Minister of Manpower and Immigration* (1972), 26 D.L.R. (3d) 216 (S.C.C.) in which the Supreme Court held that statutory discretion must be exercised within "well established legal principles;" in other words, the discretion must be exercised for *bona fide* reasons, must not be arbitrary and must not be based on irrelevant considerations.
27. In *Maple Lodge Farms v. Government of Canada*, [1982] 2 S.C.R. 2, the Supreme Court underscored these comments:

Where the statutory discretion has been exercised in good faith and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

28. The delegate considered relevant factors, including the purposes of the *Act* include ensuring that employees in British Columbia receive at least basic standards of compensation (section 2(a)), and providing fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. (section 2(d)). I find no evidence that the delegate considered irrelevant factors. Mr. Dragicevic did not allege, and there is no evidence, that the delegate acted in bad faith. I also find no evidence that the delegate arrived at his conclusion in an arbitrary fashion.
29. The appeal is dismissed.

ORDER

30. Pursuant to section 115 of the *Act*, I order the Determination dated July 23, 2015, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal