

EMPLOYMENT STANDARDS TRIBUNAL

An appeal  
pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

- by -

Devinder Singh Sodhi  
("Appellant")

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Mona Muker

**FILE No.:** 2024/004

**DATE OF DECISION:** April 29, 2024

## DECISION

### SUBMISSIONS

Manpreet Singh Sodhi

on behalf of Devinder Singh Sodhi

### OVERVIEW

1. This is an appeal by Devinder Singh Sodhi (“Employee” or “Appellant”), of a decision issued by a delegate (“Delegate”) of the Director of the Employment Standards (“Director”), dated December 11, 2023 (“Determination”). The appeal is filed pursuant to section 112(1) of *the Employment Standards Act (“ESA”)*.
2. The Employee worked for JJ Folk Studio Ltd. (“Employer”) from March 11, 2022, until June 22, 2022. On May 4, 2023, the Employee filed a complaint (“Complaint”) with the Director alleging that the Employer had contravened the *ESA* by failing to pay him regular wages, overtime wages, and vacation pay.
3. The Director found that the Appellant filed the Complaint beyond the six-month statutory time period, established under section 74(3) of the *ESA*, and had not demonstrated any special circumstances that prevented him from filing the Complaint within the prescribed time period. The Director declined to exercise their discretion to accept the late-filed Complaint.
4. The Appellant appeals the Determination on the grounds that the Director failed to observe principles of natural justice in making the Determination.
5. Section 114(1) of the *ESA* 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. I find that this appeal is appropriate to be considered under section 114(1) of the *ESA*. After reviewing the appeal submissions, I found it unnecessary to seek submissions from the Employer or the Director. Accordingly, this decision is based on the section 112(5) “record” that was before the Director at the time the Determination was made, the appeal submissions, and the Reasons for the Determination.

### ISSUES

7. The issue is whether this appeal should be dismissed pursuant to section 114(1) of the *ESA*.

### BACKGROUND

8. During the investigation of the Complaint, the Appellant stated that he did not file the Complaint within the statutory time period because he was negotiating with the Employer, and he was required to go to India in November 2022 for unrelated court proceedings. In addition, the Appellant’s representative stated that the Appellant was unable to file the Complaint while he was in India because he is not good with computers.

9. The Appellant returned from India on March 13, 2023, and filed the Complaint on May 4, 2023. The Appellant stated that he required assistance with filing the Complaint but could not get an appointment with P.I.C.S., an immigrant assistance program, until May 4, 2023.
10. The Delegate noted that section 2(d) of the *ESA* provides that one of the purposes of the *ESA* is to provide fair and efficient procedures for resolving disputes over the application and interpretation of the *ESA*. One method of attaining this purpose is to require complaints to be submitted within the six-month time period. This provides all parties, including the Employment Standards Branch (“Branch”), with a consistent and reasonable period of time to deal with complaints.
11. The Delegate also noted that section 76(1.1) of the *ESA* requires the Director to refuse to accept a complaint if the complaint is not made within the applicable time unless an extension is granted under section 74(5). The Director may extend the time period to deliver a complaint, including making an extension after the time to deliver has expired, if the Director is satisfied that special circumstances precluded the delivering of a complaint within the applicable time period, and an injustice would otherwise result.
12. Finally, the Delegate noted that the requirements to file a complaint are very explicit and publicly available on the Branch’s website. In addition, if employees or employers have questions about the Branch’s process or the requirements of the *ESA*, they may phone the toll-free Branch information line for clarification.
13. The Director found that the Appellant was required to file the Complaint on or before December 22, 2022, and there were no special circumstances that precluded him from delivering the Complaint within the time period required. Thus, the Director did not find it necessary to consider whether an injustice would result as both conditions must be met to extend the time period.
14. Accordingly, the Director declined to exercise their discretion to extend the time period to deliver the Complaint pursuant to section 74(5) of the *ESA*.
15. As the Complaint was not received in the prescribed time period and the Director did not extend the time period, the Director refused to accept the Complaint.

## **ARGUMENTS**

16. The Appellant submits that he was not able to file the Complaint within the statutory time period because he was negotiating with the Employer, who later stopped answering his phone calls. He was then required to go to India for unrelated court proceedings.
17. In addition, the Appellant submits that he is a senior and is not good with computers. Thus, he required assistance to file the Complaint, but it took him two months to get an appointment with P.I.C.S., an immigrant assistance program.
18. The Appellant also submits copies of text messages that were previously submitted to the Branch.

## ANALYSIS

19. Section 112(1) of the *ESA* allows a party named in a determination to appeal the 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.
20. Section 114(1) of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind, the Tribunal may dismiss all or part of any appeal if the Tribunal determines that any of the following apply:
- (a) the appeal is not within the jurisdiction of the tribunal;
  - (b) the appeal was not filed within the applicable time limit;
  - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
  - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
  - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
  - (f) there is no reasonable prospect that the appeal will succeed;
  - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
  - (h) one or more of the requirements of section 112 (2) have not been met.
21. An appeal is not an opportunity for a party to re-argue a case that has been made before the Director. An appeal is an error correction process, with the burden being on the Appellant to persuade the Tribunal that there is an error in the Determination under one of the statutory grounds.
22. In this case, the Appellant appeals the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination.

### ***Natural justice***

23. Natural justice is a procedural right that includes the right to know the case being made, the right to respond, the right to know about the hearing process, and the right to be heard by an unbiased decision maker (*Re 607730 B.C. Ltd. (cob English Inn & Resort)*, BC EST # D055/05; *Imperial Limousine Service Ltd.*, BC EST # D014/05). The party alleging failure to comply with natural justice must provide evidence in support of the allegation (*Dusty Investments Inc. d.b.a. Honda North*, BC EST # D043/99).
24. Natural justice does not mean that the Director must arrive at a conclusion the Appellant considers just and fair (*Tejinder Dhaliwal (Re)*, 2021 BCEST 34).

25. I find no basis for the Appellant's argument that he was denied the opportunity to present his case. He was informed that he failed to make his Complaint within the statutory time period and given the opportunity to make submissions on the reasons he was unable to file his Complaint within that time period. The Delegat 's decision not to exercise her discretion to allow the Appellant to file his Complaint late does not constitute a denial of natural justice. I find no basis for this ground of appeal.

26. Accordingly, I find that the Director did not breach the principles of natural justice.

### **Error of law**

27. Given that the Appellant feels he was unjustly treated, I have also considered whether the Delegate erred in law in exercising her discretion under section 76 of the *ESA* not to extend the statutory time period.

28. The Tribunal has adopted the following definition of "error of law" set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.):

1. a misinterpretation or misapplication of a section of the *Act* [in *Gemex*, the legislation was the Assessment Act];
2. a misapplication of an applicable principle of general law;
3. acting without any evidence;
4. acting on a view of the facts which could not reasonably be entertained; and
5. adopting a method of assessment which is wrong in principle.

29. The Tribunal's authority to interfere with a delegat 's exercise of discretion was well summarized in *Li Zheng (Re)*, 2020 BCEST 142 ("*Zheng*") at paras 27 to 31. The Tribunal has demonstrated "considerable reluctance to interfere with the exercise of discretion by the Director, only doing so in exceptional and very limited circumstances": *Victor Noakes (Re)*, 2021 BCEST 16 ("*Noakes*") at para 28.

30. The Tribunal has stated that it "will not interfere with that 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": *Re: Jody L. Goudreau and Barbara E. Desmarais*, BC EST # D066/98. Absent any of those considerations, the Director even has the right to be wrong: *Zheng* at para 29, citing *Re: Ted N. Hunt*, BC EST # D089/11, at para 42.

31. Section 74(3) of the *ESA* establishes a six-month limit on the filing of complaints. Section 76(1) requires the Director to accept and review complaints, and section 76(3)(a) provides the Director with discretion to refuse to accept or continue investigating a complaint that is not made within the time limit (see also *Karbalaeiali v. British Columbia (Employment Standards)*, 2007 BCCA 533).

32. In this case, the Appellant filed his Complaint almost eleven months following his last day of work and approximately four and a half months beyond the statutory deadline. His reasons and explanation for why he did so, as the Delegate found, did not warrant special circumstances.

33. I find that the Delegate considered the Appellant's explanation as well as the framework of the *ESA*, and the purposes of the *ESA* in making her decision. The Delegate's decision was logical, supportable, and was not based on irrelevant considerations or incorrect principles.
34. I find that there is no evidence that the Delegate engaged in an abuse of power, made a mistake in construing the limits of her authority, or made a procedural irregularity.
35. I am not persuaded that the Delegate erred in law in exercising her discretion not to extend the time period in which the Appellant could file his Complaint. I find no basis for interfering with her decision.
36. Therefore, I find that the Director did not err in law.
37. Accordingly, I dismiss the appeal.

### **ORDER**

38. The appeal is dismissed under section 114(1)(f) of the *ESA*.
39. Pursuant to section 115(1) of the *ESA*, the Determination, dated December 11, 2023, is confirmed.

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**Mona Muker**  
**Member**  
**Employment Standards Tribunal**