

Citation: Pyramids Trade Corporation
2025 BCEST 14

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Pyramid Trades Corporation

- of a Determination issued by -

The Director of Employment Standards

PANEL:	Shafik Bhalloo, K.C.
SUBMISSIONS:	Amr Mohamed, aka Amr Halem, aka Amr Abbas Abdelhalem Mohamed, on behalf of Pyramid Trades Corporation
FILE NUMBER:	2024/100
DATE OF DECISION:	January 30, 2025

DECISION

OVERVIEW

1. This appeal concerns a determination made under section 81 of the *Employment Standards Act (ESA)* on June 24, 2024 (the “**Determination**”), arising from complaints filed by five individuals—Rafic Abboud (“**Mr. Abboud**”), Mohammad Mustafa (aka Mohammad Mustafa Alkhateb referred to hereafter as “**Mr. Alkhateb**”), Amr Mohamed (also known as Amr Halem and Amr Abbas Abdelhalem Mohamed, referred to hereafter as “**Mr. Abdelhalem**”), Ali Alnajar, and Mohamed Mohamed also known as Mohamed Helal (collectively, the “**Complainants**”)—against Our Lebanese Food House Ltd. (**OLFH**), Pyramids Trade Corporation (**PTC**), and Crispy Falafel Inc. (**CFI**) (collectively, the “**Respondents**”). The Complainants alleged that the Respondents failed to pay wages, bonuses, or commissions for work performed during their employment. The Respondents jointly operated a food trailer business, “Crispy Falafel Express,” which was active in Vancouver from March 3 to May 15, 2023.
2. A delegate of the Director of Employment Standards (the “**Investigator**”) conducted an investigation, which culminated in an Investigation Report (**IR**) summarizing the evidence and arguments. The parties were given an opportunity to review and respond to the IR. Based on the IR and the submissions received, another delegate of the Director (the “**Delegate**”) issued the Determination, addressing the following key issues:
 - a. Who is the employer of the Complainants under the [ESA]?
 - b. Is Mr. Abdelhalem an employee as defined by the [ESA]?
 - c. Are any of the Complainants managers under the *Employment Standards Regulation*?
 - d. Are the Complainants owed wages, and if so, how much?
3. The Delegate determined that OLFH, PTC, and CFI collectively constituted a partnership and were jointly the employer of the Complainants under the *ESA*. OLFH provided foundational support, including the food trailer, start-up costs, and management of the business account where all revenues were deposited, ensuring the financial infrastructure of the operation. PTC managed day-to-day operations, such as hiring, training, and scheduling employees, while CFI supplied food and maintained quality standards. The shared decision-making among the three entities, including collective hiring, setting menu pricing, and approving business extensions, as well as the profit-sharing arrangement outlined in the unsigned “Operations Agreement Proposal” (the “**Proposal**”), reinforced the conclusion that they operated as partners and were jointly responsible for the Complainants’ employment.
4. The Delegate also concluded that Mr. Abdelhalem, as the sole director of PTC, was not an employee under the *ESA*. His role as the Operations and Projects Manager involved directing and controlling the business rather than working under another party’s supervision. The Proposal outlined compensation tied to PTC’s share of profits, and there was no evidence of an employment agreement, wages owed, or distinct work performed under the control of another party. Accordingly, the Delegate found that Mr. Abdelhalem was acting in his capacity as a director and not as an employee.

5. In determining whether any of the Complainants were managers excluded from *ESA* protections under the *Employment Standards Regulation*, the Delegate found that most Complainants performed non-managerial tasks such as food preparation and customer service. They lacked decision-making authority, control over budgets, or other responsibilities indicative of managerial roles, and were therefore entitled to the protections of the *ESA*. However, the Delegate determined that Mr. Alkhateb's duties were primarily managerial, as he supervised employees, scheduled shifts, and handled operational matters. His responsibilities met the regulatory definition of a manager, excluding him from entitlement to overtime or statutory holiday pay. Nonetheless, the Delegate concluded that Mr. Alkhateb was owed wages based on undisputed records of hours worked.
6. Finally, the Delegate conducted a comprehensive review of the amounts owed to the Complainants by analyzing time sheets, payroll records, and other documentation. Inconsistent or incomplete records provided by the Respondents were weighed against them. Minimum wage rates were applied to calculate amounts owed, and claims for bonuses or additional compensation were only accepted if corroborated by evidence. For example, Mr. Abboud's bonus claim was denied due to insufficient evidence. The Delegate provided detailed calculations for each Complainant, specifying amounts owed for wages, statutory holiday pay, and vacation pay.

APPEAL SUBMISSIONS OF PTC

7. PTC, through its director Mr. Abdelhalem, appeals the Determination on the natural justice ground, alleging multiple errors in the Delegate's findings. The written submissions mirror those Mr. Abdelhalem filed in his separate appeal of the Determination, which is addressed in a different appeal decision.
8. In its submissions, PTC contends that the complaints were improperly directed at it and CFI, asserting that the actual employer was OLFH, owned by Shaddy Michel Estephan and Salway Sayah. PTC argues that these owners dismissed employees without notice, failed to pay outstanding wages, sold the trailer business, and relocated to Alberta, leaving employees without recourse and causing significant financial and psychological hardship. PTC specifically objects to the finding of joint liability, including PTC as an employer alongside OLFH and CFI. PTC further alleges that the Delegate misinterpreted evidence, disregarded or altered employee witness statements that identified only OLFH as the employer, and failed to establish sufficient grounds to support a finding of joint employer liability.
9. PTC alleges that Mr. Estephan and Ms. Sayah engaged in deceptive practices, including instructing Mr. Abdelhalem to prepare payroll for their son, who worked briefly as a volunteer in the trailer business during spring break. Although Mr. Abdelhalem refused to issue payroll, Ms. Sayah insisted on its creation for potential future use. PTC claims the Delegate improperly relied on this fabricated record as evidence to support PTC's classification as an employer, despite the lack of definitive proof linking PTC to the employees' complaints. Additionally, PTC states that its operations agreement with OLFH and CFI—the Proposal—contained no provisions indicating joint employer status.
10. Mr. Abdelhalem, who also served as Operations Manager for the trailer business, disputes being classified as an employer, asserting that Mr. Estephan and Ms. Sayah hired him, that he worked without pay, and filed his own wage complaint.

11. Finally, PTC highlights ongoing legal claims against Mr. Estephan and Ms. Sayah in small claims and Supreme Court, arguing that the Determination undermines these efforts. PTC contends that the Delegate's errors have caused significant financial losses and psychological harm to both the company and Mr. Abdelhalem. It requests that the Tribunal overturn the Determination and address the alleged errors.
12. For the following reasons, I conclude that PTC's appeal has no reasonable prospect of success. PTC has failed to demonstrate that the Director breached the principles of natural justice or made any reviewable error. Accordingly, I dismiss the appeal without seeking submissions from the other parties, pursuant to section 114(1)(f) of the *ESA*.

ISSUE

13. Has PTC established a reasonable prospect of success in arguing that the Director's handling of the evidence violated the principles of natural justice or involved any other reviewable error?

ANALYSIS

14. The grounds for appeal are statutorily limited to those set out in subsection 112(1) of the *ESA*, which states:
- 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 being made.
15. A review of Tribunal decisions reveals certain broad principles applicable to appeals, which have consistently been applied. These principles inform the analysis and outcome of this appeal.
16. An appeal is not merely an opportunity to re-litigate the merits of a claim before a different decision-maker. It is a process of error correction, where the burden is on the appellant to demonstrate to the Tribunal that there is an error in the determination, based on one of the statutory grounds.

Natural justice

17. A party alleging a failure to comply with the principles of natural justice, as PTC has in this appeal, must provide supporting evidence for such an allegation. As stated in *Dusty Investments Inc. dba Honda North*, BC EST #D043/99, the onus lies with an appellant to demonstrate that the investigator or delegate failed to adhere to these principles. In this case, I find no evidence in the appeal to support a conclusion that the Investigator or the Delegate failed to comply with natural justice requirements.

18. The Tribunal outlined the principles of natural justice that generally apply in the complaint process 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. (*BWI Business World Incorporated BC EST #D050/96*).

19. When the investigation process incorporates the elements outlined above, it is unlikely that a failure to observe the principles of natural justice will be found. Upon reviewing the record and the materials submitted in this appeal, I find that PTC was afforded the necessary opportunity to present its position both to the Investigator and to the Delegate. Mr. Abdelhalem has not provided any objectively credible evidence to suggest otherwise, nor has he demonstrated that the Investigator or the Delegate altered witness statements that clearly identified OLFH as the employer.

20. There is simply no indication in the reasons, the record, or the submissions that either the Investigator or the Delegate failed to adhere to the principles of natural justice, nor is there evidence of a breach of section 77 of the *ESA* in the making of the Determination. The record, which includes substantial documentation and detailed submissions from all parties, demonstrates that PTC and its director, Mr. Abdelhalem, were fully informed of the complaints, actively participated in the investigation, and were afforded ample opportunity to respond before the Determination was made. In light of this, I do not find that PTC has established any failure to observe the principles of natural justice by the Investigator or the Delegate in this case.

Error of Law

21. While PTC does not explicitly list error of law as a ground of appeal, the crux of this appeal is that the Delegate made legal errors in reaching the Determination.

22. The Tribunal has adopted the definition of “error of law” as outlined by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, 1998 CanLII 6466 (BC CA), [1998] B.C.J. No. 2275 (B.C.C.A.), which includes the following:

1. A misinterpretation or misapplication of a section of the Act;
2. A misapplication of an applicable principle of general law;
3. Acting without any evidence;
4. Acting on a view of the facts that could not reasonably be entertained; and
5. Adopting a method of assessment that is wrong in principle.

23. I will now assess whether the appeal identifies any error of law in the Determination.

24. Mr. Abdelhalem's submissions on behalf of PTC primarily contend that the Delegate either misinterpreted the evidence or relied on inappropriate evidence to link PTC with OLFH and CFI as employers of the Complainants. However, only OLFH is the employer of the Complainants.
25. Determining whether a person qualifies as an employer under the *ESA* is a mixed question of law and fact, which requires applying the facts as found to the relevant legal principles under the Act.
26. A decision made by the Director on a mixed question of law and fact is entitled to deference. As noted in *Britco Structures Ltd.*, BC EST # D260/03, citing paragraph 35 of the Supreme Court of Canada in *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748: "Questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests." An error of law may arise in a mixed law and fact case if the legal issue is misapplied in a way that results in an error.
27. In the Determination, the Delegate accurately outlined the legal framework for determining whether a person qualifies as an employer under the *ESA* and appropriately identified and assessed the relevant factors (see pages R4 to R9).
28. Once the applicable legal principles are properly applied, the question of whether someone is an employer under the *ESA* becomes a matter of factual inquiry. The Tribunal does not have jurisdiction to assess whether the Director erred in law in relation to the facts. Applying the correctly identified legal principles to the facts as found by the Director does not, on its own, amount to an error of law. A finding of fact can only be reviewed as an error of law by the Tribunal if the Director or her delegate acted without evidence or adopted a view of the facts that could not reasonably be entertained, as defined in the third and fourth categories of the Tribunal's adopted definition of error of law.
29. This is not a case where the Delegate acted without any evidence.
30. The test for determining whether the Delegate acted on a view of the facts that could not reasonably be entertained is as follows:
- ... that there is no evidence before the Board which supports the finding made, in the sense that it is inconsistent with and contradictory to the evidence. In other words, the evidence does not provide any rational basis for the finding. It is perverse or inexplicable. Put still another way, in terms analogous to jury trials, the Appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have come to the determination, the emphasis being on the word "could".
- See *Delsom Estate Ltd. v. British Columbia (Assessor of Area No. 11 Richmond/Delta)*, 2000 BCSC 289 (CanLII), [2000] B.C.J. No. 331 (B.C.S.C.) at para. 18, cited with approval in *British Columbia (Assessor Area No. 27-Peace River) v. Burlington Resources*, 2003 BCSC 1272.
31. Having reviewed the Determination and the full record, I find no basis to conclude that the Delegate's findings regarding PTC's status as an employer, along with OLFH and CFI, were unreasonable. The Delegate's analysis is consistent with the evidence and provides a sound basis for the conclusion.

Specifically, the decision to include PTC as an employer of the Complainants, together with OLFH and CFI, was grounded in several factual findings.

32. The Delegate determined that Crispy Falafel Express operated as a joint venture, with PTC, OLFH, and CFI each assuming specific responsibilities vital to the business. While the Proposal was not formally signed, it outlined the roles of the parties and was effectively implemented. PTC managed day-to-day operations, including hiring, training, and scheduling employees, demonstrating its significant control over the business.
33. Furthermore, the Delegate found that all three entities had a role in approving key employees, reinforcing the conclusion that no single party held exclusive control over the workforce. The shared profits among the three parties and the absence of formal employment agreements, attributed to OLFH's decision to delay such arrangements, further supported the finding of joint participation.
34. In conclusion, the Delegate found that the parties operated the business collaboratively, with PTC exercising sufficient control over employees to meet the definition of an employer under the *ESA*. This collective approach to operations substantiated the finding that PTC, OLFH, and CFI were all joint employers of the Complainants.
35. I am satisfied that the factual conclusions reached by the Delegate are well-supported by the evidence presented. While PTC and Mr. Abdelhalem disagree with the outcome, the appeal does not demonstrate that the findings were made without evidence or that they were perverse or inexplicable.
36. The burden of proof in this appeal lies with PTC, as the appellant, to convince the Tribunal that the Determination was incorrect, whether in law, fact, or a combination of both. Specifically, PTC must demonstrate that the conclusion that it was an employer, jointly with OLFH and CFI, under the *ESA* was wrong.
37. I am not persuaded that PTC has met this burden. At its core, the appeal challenges the Delegate's conclusion regarding PTC's status under the *ESA*, arguing that the evidence does not support the decision. However, the appeal primarily seeks to have the Tribunal reassess the factual context and reach a different conclusion, a process not permitted under the *ESA*.
38. To clarify, an appeal is an error-correction process, and the burden of demonstrating an error rests with PTC. The Tribunal is reluctant to re-examine the Delegate's conclusions unless a reviewable error is evident. In this case, PTC has not established that the Delegate committed an error of law in determining that it was an employer, jointly with the other companies, under the *ESA*. Consequently, I find that there is no basis for an appeal under the error of law ground.
39. In addition, I note that PTC and Mr. Abdelhalem dispute the Delegate's finding that Mr. Abdelhalem was not an employee under the *ESA* and was not owed wages, bonuses, and overtime for his role as "Operations Manager" of the Crispy Falafel Express business. This issue is central to a separate appeal Mr. Abdelhalem has filed, using the same submissions, and will be addressed in a distinct decision, rather than within the scope of this appeal.

CONCLUSION

40. I find that PTC's appeal fails to demonstrate any substantive errors in the application of the law or breaches of natural justice that would warrant overturning the Determination. Accordingly, I conclude that the appeal has no reasonable prospect of success and dismiss it on this basis.

ORDER

41. Pursuant to section 114(1)(f) of the *ESA*, I dismiss the appeal. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination.

/S/ Shafik Bhalloo

Shafik Bhalloo, K.C.
Member
Employment Standards Tribunal