

Citation: Amr Mohamed, aka Amr Halem,  
aka Amr Abbas Abdelhalem Mohamed  
2025 BCEST 15

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Amr Mohamed, aka Amr Halem,  
aka Amr Abbas Abdelhalem Mohamed

- 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 his own behalf
FILE NUMBER:	2024/101
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**), Crispy Falafel Inc. (**CFI**) and/or Pyramids Trade Corporation (**PTC**) (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. The Delegate provided detailed calculations for each Complainant, specifying amounts owed for wages, statutory holiday pay, and vacation pay.

#### **APPEAL SUBMISSIONS OF MR. ABDELHALEM**

7. Mr. Abdelhalem appeals the Determination on the sole ground of natural justice, alleging multiple errors in the Delegate's findings. His written submissions largely mirror those he filed, in his capacity as a director, on behalf of PTC in its separate appeal of the Determination. Since the issues concerning PTC's status as a joint employer of the Complainants, along with the other companies, are addressed in the decision regarding PTC's appeal, I will not reiterate those submissions or my analysis and decision on those matters here. They can be found in *Pyramids Trade Corporation*, 2025 BCEST 14.
8. Mr. Abdelhalem asserts that that according to the Proposal, Shaddy Michel Estephan and Salway Sayah, the owners of OLFH and the trailer, hired him to serve as Projects & Operations Manager of the Crispy Falafel Express business. He claims that they agreed to pay him a salary, overtime according to working hours, and a 25% bonus from the net profit of the business. However, he contends that no salary was paid to him, and he was asked to wait until the business reached a break-even point after the first two months of operation. He further contends that, without prior notice, the employers ordered all employees to cease work on May 15, 2023, and parked the trailer at their residence in preparation for its sale. The trailer was sold at the end of May 2023. He maintains that, like the other employees, he was denied payment for his outstanding wages. This non-payment of wages led him to submit a complaint to the Director of Employment Standards (the "**Director**") in May 2023. He questions why the Director concluded that he was not considered an employee under the *ESA*, despite being hired by the owners of the trailer, working diligently for 2.5 months to support the business, and never receiving a salary during his employment.

9. For the following reasons, I conclude that Mr. Abdelhalem's appeal has no reasonable prospect of success. He 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

10. Has Mr. Abdelhalem established a reasonable prospect of success in arguing that the Director violated the principles of natural justice in making the Determination, or that any other reviewable error occurred in the process?

## ANALYSIS

11. 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.

12. 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.

13. An appeal is not merely an opportunity to relitigate 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***

14. A party alleging a failure to comply with the principles of natural justice, as Mr. Abdelhalem 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 the 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.

15. 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).

16. 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 both Mr. Abdelhalem and PTC were afforded the necessary opportunity to present their positions to both the Investigator and the Delegate. In his appeal, Mr. Abdelhalem has not provided any objectively credible evidence to suggest otherwise.
17. 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 Mr. Abdelhalem was fully informed throughout the investigation of the complaints, actively participated in the investigation, and was afforded ample opportunity to respond before the Determination was made. Considering this, I do not find that Mr. Abdelhalem has established any failure to observe the principles of natural justice by the Investigator or the Delegate in this case.

### **Error of Law**

18. While Mr. Abdelhalem does not explicitly list error of law as a ground of appeal, the central issue in his appeal is that the Delegate made legal errors in reaching the Determination.
19. 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.
20. I will now assess whether the appeal identifies any error of law in the Determination.
21. Mr. Abdelhalem’s appeal submissions primarily contend that the Delegate either misinterpreted the evidence or failed to consider evidence in finding Mr. Abdelhalem was not an employee under the *ESA*.
22. Determining whether a person qualifies as an employee 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 *ESA*.

23. 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.
24. In the Determination, the Delegate accurately outlined the legal framework for determining whether a person qualifies as an employee under the *ESA* and appropriately identified and assessed the relevant factors (see pages R10 to R13).
25. Once the applicable legal principles are properly applied, the question of whether someone is an employee 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.
26. This is not a case where the Delegate acted without any evidence.
27. 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.
28. After reviewing the Determination and the full record, I find no basis to conclude that the Delegate's findings regarding Mr. Abdelhalem's status as not being an employee in the Crispy Falafel Express business were unreasonable. The Delegate's analysis is well founded, consistent with the evidence, and based on solid factual findings, which I will discuss further below.
29. First, the Director noted that Mr. Abdelhalem, as the sole director of PTC, which was a business partner of Crispy Falafel Express, performed his duties as the Projects and Operations Manager on behalf of PTC, rather than as an employee of the business.
30. The Director also observed that the Proposal, which Mr. Abdelhalem had drafted, described his role and responsibilities in managing the trailer's operations, but did not specify a rate of pay or

distinguish between work performed as a director and work that would be compensated as an employee.

31. Additionally, the Director found that Mr. Abdelhalem's duties, such as overseeing administrative and kitchen work, were largely indistinguishable from his managerial responsibilities and were consistent with his role as a director of PTC, which was entitled to 25% of the net profits from the business.
32. There was also no evidence of an employment agreement, nor was there any indication that Mr. Abdelhalem was compensated for work as an employee.
33. Finally, the Director concluded that Mr. Abdelhalem exercised direction and control over the business jointly with the principals of OLFH and CFI, further supporting the conclusion that he was acting as a business partner and not an employee. Based on these findings, the Director concluded that Mr. Abdelhalem was not an employee under the *ESA* and, therefore, had no standing to recover wages.
34. I am satisfied that the factual conclusions reached by the Delegate are well supported by the evidence presented. While Mr. Abdelhalem disagrees with the outcome—that he was not an employee in the business—the appeal does not show that the findings were made without evidence, or that they were perverse or inexplicable.
35. The burden of proof in this appeal rests with Mr. Abdelhalem, as the appellant, to persuade the Tribunal that the Determination was incorrect, whether in law, fact, or a combination of both. Specifically, he must demonstrate that the conclusion that he was not an employee in the business under the *ESA* was wrong.
36. I am not persuaded that Mr. Abdelhalem has met this burden. At its core, the appeal challenges the Delegate's conclusion regarding his 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*.
37. To clarify, an appeal is a process for correcting errors, and the burden of demonstrating such an error rests with Mr. Abdelhalem. The Tribunal is reluctant to re-examine the Director's conclusions unless a reviewable error is evident. In this case, Mr. Abdelhalem has not shown that the Delegate committed an error of law in determining that he was not an employee in the business under the *ESA*. Consequently, I find no basis for an appeal on the grounds of an error of law

## CONCLUSION

38. I find that Mr. Abdelhalem'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**

39. 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*

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**Shafik Bhalloo, K.C.**  
**Member**  
**Employment Standards Tribunal**