



Citation: Saman Bakery Ltd.
2025 BCEST 22

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Saman Bakery Ltd.
("Employer")

- of a Determination issued by -

The Director of Employment Standards

PANEL:	Jeremy Bryant
SUBMISSIONS:	Amir Tavangar, on behalf of Saman Bakery Ltd.
FILE NUMBER:	2024/114
DATE OF DECISION:	February 4, 2025

DECISION

OVERVIEW

1. Saman Bakery Ltd. (the “**Employer**”) appeals the determination of a delegate of the Director of Employment Standards (the “**Delegate**”) issued on May 13, 2024, which found the Employer had induced, influenced, or persuaded Sayed Mohsen Taha Hasan to become an employee or to be available for work by misrepresenting the availability of a position in contravention of section 8 of the *Employment Standards Act (ESA)* (the “**Determination**”).
2. The Employer recruited Mr. Hasan from Egypt to work in a chef position at their North Vancouver bakery. Mr. Hasan required a Canadian work visa, so the parties entered an employment contract and completed the requisite immigration paperwork. After Mr. Hasan received his work visa, the Employer confirmed the chef position remained available and advised him to move to Canada to commence employment. Relying on the Employer’s representations, Mr. Hasan left his employment in Egypt and moved to British Columbia, whereupon the Employer did not provide him the agreed upon work.
3. The Delegate ordered the Employer to compensate Mr. Hasan for lost wages and the expense of his airplane ticket from Egypt, with interest. He also issued a mandatory administrative penalty on the Employer for their contravention of the *ESA*.
4. The Employer appeals the Determination claiming a former employee (the “**Former Employee**”) orchestrated Mr. Hasan’s *ESA* complaint for bad faith reasons and that Mr. Hasan abandoned the offered position as he never showed up for work.
5. I have confirmed the Determination and dismissed the Employer’s appeal as it has no reasonable prospect of success. The Delegate reviewed all the evidence submitted and correctly applied section 8 of the *ESA*. The Delegate acted on a reasonable view of the facts when he concluded the Employer misrepresented the availability of the chef position and there was no evidence the complaint was not made in good faith.

ISSUE

6. On the Appeal Form the Employer indicated they are grounding their appeal on an allegation the Director of Employment Standards (the “**Director**”) failed to observe the principles of natural justice. However, their submission also alleges the Director erred in law as they argue it was “unreasonable to expect us to compensate someone who never showed up for work.” As the Employment Standards Tribunal (the “**Tribunal**”) may take a broad view of an appeal (see *Triple S Transmission Inc, dba Superior Transmissions*, BC EST # D141/03), I have considered both grounds of appeal (section 112(1)(a) and (b) of the *ESA*).
7. I have determined the issues on appeal are as follows:
 - I. Did the Director err in law by concluding the chef position was unavailable to Mr. Hasan despite the fact Mr. Hasan was late on his first scheduled workday?

- II. Did the Director fail to observe the principles of natural justice by ignoring evidence regarding Mr. Hasan's lateness on his first scheduled workday and his close relationship with the Former Employee?

I. Did the Director err in law by concluding the chef position was unavailable to Mr. Hasan despite the fact Mr. Hasan was late on his first scheduled workday?

8. One week after arriving in Canada, Mr. Hasan was late for work on his first scheduled workday as explained at page R4 of the Determination:

On the following day, March 11, 2023, the Complainant contacted Reza stating he was ready to work at any time. ...

Reza replied on March 14, 2023, asking the Complainant to come to the bakery the following day at 10:00 am to which the Complainant agreed. ...

On March 15, 2023, the Complainant took public transportation to the Bakery. As the Complainant was new to Canada, he got turned around and arrived late to the Bakery. By the time the Complainant had arrived, Reza had left.

9. Reza was a bakery employee Mr. Hasan was directed to contact by Amir Tavangar (the Employer representative he had dealt with regarding his employment contract) as Mr. Tavangar was out of the country.
10. The Employer argues other employees were on site and, had Mr. Hasan arrived late, he could have asked someone for Reza or followed up with the Employer regarding his employment.
11. It is unclear how Mr. Hasan could have known Reza had left for the day if he did not ask another employee regarding Reza's whereabouts but that is immaterial as the facts demonstrate Mr. Hasan did follow up regarding his employment.
12. The Delegate went on to consider the subsequent communication between the parties regarding Mr. Hasan's employment:

In the evening of March 15, 2023, there were multiple messages exchanged between the Complainant and Mr. Tavangar. The Complainant stated that Mr. Tavangar was not happy with the photos he had provided showing his bakery products and that Mr. Tavangar had brushed him off when trying to reschedule a meeting and start work. A follow-up meeting with Mr. Tavangar or Reza did not occur.

13. The record provided to the Tribunal in accordance with section 112(5) of the *ESA* (the "**Record**") shows the March 15, 2023, messages included the following statements from Mr. Hasan to Mr. Tavangar:

- I'm here to work with you if you don't need me just let me know.
- I hope to work with you and give my best to help the company to growing more and more! But if you don't need me at work before I work with you it's something different.

- I'm waiting for your final decision about me if I can start working with you in your company or not. Please let me know today about your final decision. Reza's he said it's not his decision. I want to know if I will work or go back to my country, I don't have time to waste anymore and every day here I'm losing money with out working.

14. In their appeal submission, the Employer says Mr. Hasan's statement he would return to Egypt if there was no work for him and subsequent non-contact led them to assume he had either returned home or found alternate employment. However, Mr. Hasan's statement does not support their position he abandoned the position as his statements clearly demonstrate his desire to start work with the Employer and he would only consider returning to Egypt **if the employment position was unavailable to him.** [emphasis added]
15. The Delegate concluded the Employer did not provide the agreed upon work to Mr. Hasan. The Tribunal does not have authority to reach a different conclusion from the Delegate on the facts absent an error of law which has been defined as:

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 which could not reasonably be entertained; and
5. Adopting a method of assessment which is wrong in principle.

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.)

16. The Delegate did not act without any evidence. He considered Mr. Hasan's lateness on his first scheduled workday, his messages to Mr. Tavangar indicating a desire to commence work, and the subsequent lack of attempt by the Employer to commence his employment. The Delegate correctly concluded the Employer did not provide Mr. Hasan the agreed upon work and did not find Mr. Hasan had abandoned the position. This was a reasonable view of the facts and was not an error of law.

II. Did the Director fail to observe the principles of natural justice by ignoring evidence regarding Mr. Hasan's lateness on his first scheduled workday and his close relationship with the Former Employee?

17. The Employer argues the Former Employee was "advising his friends, who [the Employer] sponsored to come to Canada, to file claims against us as well" which was "not only frustrating but feels like an abuse of the system, with no support available to us as employers." The Employer urged the Tribunal to review the supporting documents submitted by Mr. Hasan, as they claim many were signed by the Former Employee.
18. Natural justice does not mean the Director's delegate must arrive at a conclusion an appellant considers just and fair. Natural justice is a bundle of procedural rights, including: the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker: *Taggart (Re)*, 2022 BCEST 66.

19. The Employer is not alleging there were any breaches of natural justice in this sense. However, I note they had full knowledge of the complaint against them and were given the right to respond which they exercised, including by providing a written submission from their lawyer.
20. A failure to consider all evidence submitted may also constitute a breach of natural justice principles: *C and C Taxi Inc.*, BC EST # D084/13. As discussed, the Delegate considered the evidence submitted regarding Mr. Hasan's lateness for his first scheduled workday. The Delegate also considered evidence regarding the Employer's allegation the complaint was made in bad faith.
21. The Delegate reviewed all information on the file (page R2 of the Determination) which I have also reviewed in the Record, including the following facts:
- the Former Employee was friends with Mr. Hasan and assisted the Employer in recruiting him;
 - when he moved to British Columbia, Mr. Hasan lived with the Former Employee (the Former Employee's signature is on a Residential Tenancy Agreement with Mr. Hasan);
 - Mr. Hasan borrowed money from the Former Employee to pay for food and living costs;
 - at some point the Former Employee was terminated by the Employer and the Employer says the Former Employee brought a separate claim against them; and
 - the Former Employee assisted Mr. Hasan with translation during the Employment Standards Branch investigation.
22. The Delegate did not fail to consider this evidence. After his review, the Delegate concluded there was no evidence the complaint was frivolous, vexatious or trivial or was not made in good faith under section 76(3)(c) of the *ESA*, writing on page R8 of the Determination:
- Other than a bare assertion that the Complainant was participating in a revenge scheme, no evidence was provided that the Complainant's complaint was made for any other purposes than to ensure he receives his statutory entitlements.
23. For greater clarity, even if the Former Employee provided Mr. Hasan assistance in filing the complaint so Mr. Hasan could receive his statutory entitlements, it would not render Mr. Hasan's complaint vexatious or not in good faith. There is no evidence of an improper motivation behind Mr. Hasan's complaint.
24. The Director did not fail to observe the principles of natural justice.

CONCLUSION

25. The Employer has not demonstrated that the Director erred in law or failed to observe the principles of natural justice in making the Determination. As there is no reasonable prospect their appeal would succeed, it is dismissed.

ORDER

26. The appeal is dismissed pursuant to section 114(1)(f) of the *ESA* as it has no reasonable prospect of success.
27. Pursuant to section 115(1)(a) of the *ESA*, I order the Determination dated May 13, 2024, be confirmed together with any interest that has accrued under section 88 of the *ESA*.

/S/Jeremy Bryant

Jeremy Bryant
Member
Employment Standards Tribunal