

Citation: Ghassan Asad  
2025 BCEST 32

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Ghassan Asad

- of a Determination issued by -

The Director of Employment Standards

PANEL: Sherry Shir

SUBMISSIONS: Ghassan Asad, on his own behalf

Dawn Rowan, on behalf of the Director of Employment  
Standards

FILE NUMBER: 2024/127

DATE OF DECISION: March 19, 2025

## DECISION

### OVERVIEW

1. This is an appeal filed by Ghassan Asad of a determination that was issued by a delegate (“Delegate”) of the Director of Employment Standards dated September 17, 2024 (“Determination”).
2. The Determination held that Revolution Resource Recovery Park Inc. (“Revolution Resource Recovery”) owed Mr. Asad regular wages, overtime pay, and a signing bonus. The Delegate then concluded that Mr. Asad was not entitled to the sick day bonus, the birthday bonus, or compensation for length of notice under section 64 of the *Employment Standards Act (ESA)*.
3. Mr. Asad appeals the Determination on the basis that the Delegate erred in law and failed to observe the principles of natural justice in issuing the Determination.
4. For the reasons that follow, I dismiss the appeal and order the Determination be confirmed under section 115(1)(a) of the *ESA*.

### ISSUES

5. The appeal raises the following issues:
  - a. did the Delegate err in law when she classified Mr. Asad’s employment status as part-time following his return from a medical leave of absence?
  - b. did the Delegate err in law or fail to observe the principles of natural justice when she determined that Mr. Asad was not entitled to the sick day or birthday bonus?
  - c. did the Delegate err in law by determining that Mr. Asad was not entitled to compensation for the length of service?

### ANALYSIS

6. Subsection 112(1) of the *ESA* sets out the statutorily limited grounds of appeal, which reads as follows:
  - 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.

## **I. Error of Law**

7. The British Columbia Court of Appeal's decision in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 ("Gemex"), is the leading case that defines what constitutes an error of law. To establish an error of law, Mr. Asad must demonstrate that the Delegate has engaged in one of the following:
1. a misinterpretation or misapplication of a section of the *ESA*;
  2. a miscalculation 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. exercising discretion in a fashion that is wrong in principle.
8. The grounds for appeal outlined in section 112(1) of the *ESA* do not generally allow for appeals based on factual errors. The Tribunal does not have the authority to consider appeals that aim to challenge the factual conclusions reached by a delegate unless those findings involve an error of law: *Britco Structures Ltd.*, BC EST # D260/03; *Re Pro-Serv Investigations Ltd.*, BC EST # D059/05; and *Re Koivisto (o/a. Finn Custom Aluminum)*, BC EST # D006/05.
9. It is very rare for the Tribunal to conclude that a factual finding amounts to an error of law. For a finding of fact to amount to an error of law, Mr. Asad has to establish objectively that the Delegate has:
- a) committed a "palpable and overriding error on the facts";
  - b) "acted without any evidence or on a view of evidence that could not reasonably be entertained"; or
  - c) arrived at a "clearly wrong conclusion of fact."

(see *3 Sees Holdings Ltd. (Jonathan's Restaurant)*, BC EST #D041/13 at paras 26 to 29; *Sutherland Hills Rest Home Ltd.*, BC EST # D088/11 at para 54)

## **II. Natural Justice**

10. Principles of natural justice are procedural rights that ensure parties are aware of the case against them, have the opportunity to present their evidence, and are heard by an independent decision-maker. The Director and her delegates operate in a quasi-judicial capacity when investigating complaints under the *ESA*. As a result, they must carry out their duties impartially and neutrally. Procedural fairness requires that parties be given the opportunity to respond to the evidence and arguments presented by the opposing party: see *Asian Drywall Ltd.*, BC EST # D029/17 at para 48, citing *Imperial Limousine Services Ltd.*, BC EST # D014/05.
11. On appeal, the burden rests with Mr. Asad to demonstrate some breach of the principles of natural justice requiring remedy: *Christopher Brough*, BC EST # D041/17 at para 14.

**Issue 1: Did the Delegate err in law when she classified Mr. Asad’s employment status as part-time following his return from a medical leave of absence?**

12. Mr. Asad argues that the Delegate erred in law when she concluded that his return to work in November 2022, was “on a gradual return to work/part time basis.” Mr. Asad states that this determination is incorrect because he was not classified as a part-time employee, and the conclusion contradicts section 56 of the *ESA*.
13. The evidence before the Delegate was that Mr. Asad began full-time employment with Revolution Resource Recovery on September 28, 2021. On March 8, 2022, he took a medical leave of absence after sustaining a workplace injury, during which he received wage loss compensation from WorkSafeBC. On November 23, 2022, he returned to work under a WorkSafeBC-approved gradual return to work (“GRTW”) plan, which provided for a progressive increase in his working hours. Based on these facts, the Delegate concluded that Mr. Asad “returned to work once again on November 23, 2022, on a gradual return to work/part time basis.” Mr. Asad disputes this conclusion, and while he has identified this issue as an error of law, he is actually challenging the Delegate’s factual findings.
14. The grounds of appeal listed in section 112(1) of the *ESA* do not provide for an appeal based on errors of fact. The Tribunal has no authority to consider appeals that seek to have the Tribunal reach a different factual conclusion than the Director's unless the Director's findings raise an error of law: *Britco Structures Ltd.*, BC EST # D260/03.
15. For a finding of fact to amount to an error of law, Mr. Asad must demonstrate that, in making that finding of fact, the Delegate made a palpable and overriding error on the facts, reached a clearly wrong conclusion of fact, or acted without any evidence or on a view of the evidence could not reasonably be entertained. Given that the Delegate’s findings of fact about Mr. Asad’s work hours upon his return from leave are supported by the evidentiary record before her, I find that it does not amount to an error of law.
16. Regarding Mr. Asad’s argument on section 56 of the *ESA*, that provision states that during a leave of absence, the employee’s employment is deemed to be continuous, with no break in service, for the purpose of calculating vacation credits, pensions and other benefits.
17. In this case, the Delegate’s statement about Mr. Asad’s return to work being on a “part time basis” does not imply that his employment was terminated or restarted, contrary to section 56 of the *ESA*. It only acknowledges that Mr. Asad’s return to work involved different hours than before. Therefore, I reject Mr. Asad’s argument that the Delegate’s finding contradicts section 56 of the *ESA*.

**Issue 2: Did the Delegate err in law or fail to observe the principles of natural justice when she determined that Mr. Asad was not entitled to a sick day or birthday bonus?**

18. Mr. Asad raises multiple arguments on this point of appeal. Since the Delegate's reasons for denying the sick day bonus differ from those for denying the birthday bonus, I have addressed Mr. Asad’s arguments for each bonus separately.

### ***I. The Sick Day Bonus***

19. Mr. Asad argues that the Delegate erred in law and breached principles of natural justice when she concluded that he was not entitled to the sick day bonus because he was not “actively contributing” to the workplace. He contends that this conclusion violates the principles of continuous employment prescribed under section 56 of the *ESA*. He also argues that this conclusion contradicts Revolution Resource Recovery’s policy, which states that all employees are eligible for the payout if they have completed a full year of employment. Mr. Asad further argues that the Delegate violated the principles of natural justice because she failed to give due consideration to the evidence before her regarding the terms of the sick day bonus.
20. In response to Mr. Asad’s argument, the Delegate states that there was sufficient evidentiary basis for her findings on this issue. Specifically, the evidence indicated that employees were informed during a staff meeting that they must be full-time employees and have worked for a complete calendar year to qualify for the sick day bonus. Based on this evidence, the Delegate concluded that the bonus intended to act “as an incentive for employees who are present and actively contributing to the workplace to refrain from using sick days, thereby earning additional payout at the end of the year.”
21. The Delegate also submits that Mr. Asad mistakenly equates continuous employment with actively working. In support of this position, the Delegate states that work is defined in section 1 of the *ESA* as “the labour or services an employee performs for an employer whether in the employee’s residence or elsewhere.” In this case, Mr. Asad was found to be continuously employed. However, the Delegate found that he had not earned the bonus because he had not worked the required full calendar year by actively performing job duties.
22. For a bonus to be considered wages under the *ESA*, it must meet the definition set out under section 1. Specifically, paragraph (b) of the definition of “wages” states that wages include “money that is paid or payable by an employer as an incentive and relates to hours of work, production or efficiency.” On the other hand, paragraph (g) states that wages do not include “money that is paid at the discretion of the employer and is not related to hours of work, production or efficiency.”
23. The Tribunal has held that the definition of wages set out in paragraph (b) has three components or requisites that must be met: 1) the money is paid or payable; 2) that it be paid or payable as an incentive; and 3) that it relates to hours of work, production or efficiency: *Taiga Building Products Ltd.*, BC EST # D059/07; *Shell Canada Products Limited/Produits Shell Limitée*, BC EST # RD488/01.
24. With respect to the first component set out above, the Tribunal has held that an employer and employee can agree to specific preconditions for payment of money and if such preconditions are not met, the money does not become “payable” and, therefore, does not fall within the definition of wages under the *ESA*: *Cascadia Technologies Ltd.*, BC EST # D010/97.
25. In this case, the Delegate concluded that the sick day bonus was not payable because Mr. Asad did not meet the preconditions set for payment of that bonus, namely, the requirement for him to be present in the workplace and actively contribute to the workplace for a full calendar year. This conclusion is wholly reasonable considering the evidence before the Delegate.

26. I also reject Mr. Asad's argument that the Delegate's findings contravene section 56 of the *ESA*. I agree with the Delegate that Mr. Asad mistakenly equates continuous employment with actively working. I further agree with the Delegate's submission that it is possible for an employee to remain employed but not actively working due to illness or injury. Accordingly, the Delegate's findings that Mr. Asad did not actively work the required full calendar year to qualify for the sick day bonus do not amount to a finding that he was not continuously employed. Therefore, the Delegate's findings do not violate section 56 of the *ESA*.
27. Finally, the Delegate did not breach principles of natural justice when she held that Mr. Asad was not entitled to the sick day bonus. Firstly, the Determination demonstrates that the Delegate considered both Mr. Asad's and Revolution Resource Recovery's submissions. Secondly, the section 112(5) "record" demonstrates that the Delegate allowed each party to present their evidence. Thirdly, the Determination demonstrates that the Delegate outlined the issues and provided a fair and unbiased forum for resolution. Mr. Asad has not shown any breach of natural justice principles in this case.

## ***II. The Birthday Bonus***

28. Concerning the birthday bonus, Mr. Asad argues that the Delegate erred in law and breached principles of natural justice by finding that the birthday bonus was discretionary.
29. In support of his position, Mr. Asad submits that Revolution Resource Recovery's communications had indicated that the birthday bonus was a "regular part of the employer's policy for full-time employees who had completed a full calendar year of employment before their birthday" and since he had met that condition, he should have been provided with the bonus. He further argues that the bonus was tied to hours/days worked because it required the employee to be employed full-time for one year. He states that he was employed full-time before his medical leave, and his time on medical leave "is considered continuous under the law." Finally, he argues that the Delegate violated the principles of natural justice because she failed to consider the evidence before her concerning the terms of the sick day bonus.
30. I note that Mr. Asad raised essentially the same arguments before the Delegate in support of his assertion that he was entitled to the birthday bonus.
31. In response to Mr. Asad's position, the Delegate submits that Mr. Asad is once again conflating active and continuous employment.
32. As set out earlier, for a bonus to be considered wages under the *ESA*, it must meet the three requirements set out in paragraph (b) of the definition of wages. One of these requirements is that the money must become "payable," and the other condition is that it must be tied to hours of work, production or efficiency.
33. Based on the evidence before her, the Delegate found that the birthday bonus was not tied to hours worked, productivity, or efficiency. As a result, she found that the bonus was discretionary and not recoverable because it did not fall under the definition of wage as set out in section 1 of the *ESA*. I find the Delegate's finding in this regard to be reasonable given that the payment of the bonus was tied to Mr. Asad's birthday. Therefore, I see no basis for interfering with the Delegate's findings concerning the birthday bonus.

34. I also find that Mr. Asad is attempting to reargue the issue of the birthday bonus that was before the Delegate to achieve a more favourable outcome.
35. Mr. Asad previously argued before the Delegate that he was entitled to the birthday bonus because it was tied to hours worked and should, therefore, be considered wages. He reiterates this argument in his appeal of the Determination, seeking to overturn the Determination for the same reasons he previously presented to the Delegate.
36. An appeal to the Tribunal is not meant to be an opportunity for rehashing information and arguments that have already been considered during the complaint, investigation, and determination process under part 10 of the *ESA*: see *Blue-O Technology Inc.*, 2023 BCEST 58; *Masev Communications*, BC EST # D205/04.
37. The appeal process “is not a forum for the unsuccessful party to have a second chance to advance arguments already advanced in the investigation stage and properly rejected in the determination”: *Zameen Sabet*, 2024 BCEST 21, citing *Chilcotin Holidays Ltd.*, BC EST # D139/00.
38. Additionally, the Delegate's conclusion that the birthday bonus did not qualify as wages under the *ESA* is supported by evidence showing that the bonus was not “payable” because Mr. Asad did not fulfill the preconditions required for its payment.
39. The evidence before the Delegate was that Revolution Resource Recovery paid the birthday bonus to full-time employees on their birthday after working one full calendar year. Mr. Asad does not dispute this evidence. Yet, the section 112(5) “record” before the Delegate establishes that Mr. Asad was not working full-time in the weeks before or after his birthday and, therefore, he failed to meet the eligibility criteria for the birthday bonus.
40. Based on the foregoing, I dismiss Mr. Asad’s appeal under this issue.
41. Mr. Asad has also alleged that the Delegate’s findings concerning the birthday bonus breach principles of natural justice. I find there has been no such breach. As I set out earlier, the section 112(5) “record” shows that the parties were made aware of the case against them, they had the opportunity to present their evidence, and the Delegate dealt with all the issues that were before her in an impartial and neutral manner.
42. For these reasons, I find that the Delegate did not make an error in law or breach principles of natural justice when she concluded that Ms. Asad was not entitled to the birthday bonus.

**Issue 3: Did the Delegate err in law by determining that Mr. Asad was not entitled to compensation for length of service?**

43. Under this issue, Mr. Asad refers to section 63(4) of the *ESA* and argues that, during the notice period, he ought to have received the average wages he would have earned as a full-time employee. He contends that he was underpaid since he was not working his full-time hours during the notice period.
44. The Delegate argues that the undisputed evidence demonstrated that Mr. Asad was given two weeks’ written notice of termination due to a shortage of work. In addition, the record of hours Mr. Asad

submitted to the Delegate illustrated that he had not worked full-time during his last eight weeks of employment.

45. Section 63(3)(a) of the *ESA* states that an employer who dismisses an employee can give the employee a corresponding amount of advance, written notice of their dismissal, instead of paying wages as compensation for length of service: *John Curry*, 2022 BCEST 2, at para 58.
46. Where the evidence establishes that the employer provided the employee with written notice of termination or equivalent wages or a combination of both, or that the employee quit, retired or was terminated for cause, then an employer is not required to pay compensation for length of service: *Rene Rahi and Shahab Rahi*, 2018 BCEST 15 at para 36.
47. The undisputed evidence before the Delegate established that Mr. Asad received two weeks' written notice under the *ESA*. Therefore, the Delegate did not err in law when she held that Mr. Asad was not entitled to any additional compensation for length of service under section 63 of the *ESA*.
48. I also find that Mr. Asad's reliance on section 63(4) of the *ESA* is misplaced. That section is only relevant when determining an employer's liability for payment in place of working notice. Since Mr. Asad was provided with advance, written notice under section 63(2)(a) of the *ESA*, section 63(4) has no application

## CONCLUSION

49. Mr. Asad has failed to establish that the Delegate erred in law or breached principles of natural justice when she held that he was not entitled to the sick day bonus, the birthday bonus, or compensation for length of service.

## ORDER

50. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination dated September 17, 2024, together with whatever interest has accrued under section 88 of the *ESA*.

*/S/ Sherry Shir*

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**Sherry Shir**  
**Member**  
**Employment Standards Tribunal**