

Citation: Hot Soup Marketing Group Inc.  
2025 BCEST 35

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Hot Soup Marketing Group Inc. carrying on business as Hot Soup Group also  
known as Hot Soup Marketing Group also known as Hot Soup Media

- of a Determination issued by -

The Director of Employment Standards

PANEL: John Chesko

SUBMISSIONS: Hussein Samnani, on behalf of Hot Soup Marketing Group Inc.  
carrying on business as Hot Soup Group also known as Hot  
Soup Marketing Group also known as Hot Soup Media

FILE NUMBER: 2024/112

DATE OF DECISION: March 20, 2025

## DECISION

### OVERVIEW

1. Hot Soup Marketing Group Inc. carrying on business as Hot Soup Group also known as Hot Soup Marketing Group also known as Hot Soup Media (“**Hot Soup**”) operates a marketing agency in Vancouver, British Columbia which falls within the jurisdiction of the *Employment Standards Act (ESA)*.
2. Hot Soup employed Pedro Andres Guerrero Meza (the “**Employee**”) as a videographer and graphic designer from May 29, 2019, to a disputed date in September 2022.
3. The employment relationship was subject to the Canada-United States-Mexico CUSMO professional program and was found to be exempt from a Labour Market Impact Assessment pursuant to applications submitted by the parties to Immigration, Refugee and Citizenship Canada.
4. The Employee filed a complaint under the *ESA* with the Director of Employment Standards (the “**Director**”) after Hot Soup and the Employee did not agree on the wages and benefits, if any, that were owed to the Employee.
5. A delegate of the Director (the “**Investigator**”) was assigned to the case and followed up and requested evidence and submissions.
6. The Investigator prepared a report dated January 31, 2024, summarizing the information received concerning the complaint and included a list of records and documents (the “**Investigation Report**”). The Investigation Report was provided to Hot Soup and the Employee, and they were given an opportunity to respond to it.
7. The Investigation Report and the responses provided by the parties were submitted to another delegate of the Director (the “**Delegate**”).
8. The Delegate issued the Determination on July 24, 2024 (the “**Determination**”).
9. The Determination held Hot Soup breached the *ESA* and owed wages, statutory holiday pay, annual vacation pay, compensation for length of service, and accrued interest to the Employee and also assessed mandatory penalties against Hot Soup. The total amount found owing by Hot Soup in the Determination is \$9,371.60.
10. Hot Soup appeals on the grounds that the Director failed to observe the principles of natural justice in making the Determination and that new evidence has become available that was not available at the time the Determination was being made.
11. In addition, while not set out as a ground of appeal by Hot Soup, I have also considered whether the Director erred in law in the Determination.
12. For reasons set out below, I find this appeal has no reasonable prospect of success (*ESA*, s 114(1)(f)) as Hot Soup has not shown the Director failed to observe the principles of natural justice in making

the Determination nor that new evidence has become available that was not available at the time the Determination was being made nor that the Director erred in law.

13. I therefore dismiss the appeal without seeking submissions from the other parties and confirm the Determination.

## **ANALYSIS**

14. These reasons are based on the written submissions of Hot Soup, the Determination and Reasons for the Determination, and the section 112(5) record (the “**Record**”).
15. On receiving Hot Soup's appeal, the Director provided the Tribunal, Hot Soup, and the Employee with the Record. The Tribunal then requested submissions on the completeness of the Record from the parties. The Tribunal did not receive any objections to the completeness of the Record and the Tribunal accepts the Record as complete.
16. Upon review of the Record, the Tribunal noted that the Director had requested the Tribunal review and decide whether certain personal information should be disclosed to the parties. The Tribunal subsequently requested that the Director provide the parties with a copy of the two (2) video files, as they form part of the Record.
17. Once the Tribunal received confirmation that the Director had provided the parties with the two (2) video files that form a part of the Record, Hot Soup was given the opportunity to provide a further submission to the Tribunal in support of its appeal.
18. Hot Soup’s additional submission was provided to the parties and they were advised that no further submissions were required.

## **Appeal of the Determination**

19. Section 112(1) of the *ESA* provides that a person may appeal a 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. An appeal is limited to the grounds set out in the *ESA* and an appellant has the onus to show that the appeal meets one or more of the specified grounds. An appeal is not a new hearing of the case nor is it intended to be an opportunity to resubmit an appellant’s facts and arguments and ‘try again’ with another forum.

## **Has Hot Soup shown the Director failed to observe principles of natural justice?**

21. In this appeal, Hot Soup submits the Director failed to observe the principles of natural justice.

22. Hot Soup submits there was a breach of natural justice as “there was no opportunity to hear the case against me in its entirety...nor the opportunity to review evidence prior to the investigation report being submitted to the director for corporate determination.” Hot Soup submits “during the initial 1-2 calls with the [Investigator], there was information that was withheld and the manner in which the conversations took place, there was an assumption of guilt and an immediate request to provide evidence that refuted the claim of withheld wages/unpaid vacation.” Hot Soup further submits they were not provided with timely nor sufficient information to properly respond to the complaint and the information and evidence that was provided by Hot Soup was unfairly disregarded.
23. Natural justice has been described as the right to a fair procedure. It includes specific rights such as the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker (See *Re 607730 B.C. Ltd. (cob English Inn & Resort)*, BC EST # D055/05, and *Imperial Limousine Service Ltd.*, BC EST # D014/05).
24. A party alleging failure to comply with natural justice must provide evidence in support of the allegation. It isn't enough to just allege a failure of natural justice. There needs to be specific evidence or argument about how the determination procedure did not meet requirements of natural justice (see *Dusty Investments Inc. d.b.a. Honda North*, BC EST # D043/99).
25. I have reviewed the Record and considered Hot Soup’s submissions. I find there is no basis for Hot Soup's argument on this ground nor is there any basis on the Record for concluding the Director failed to observe the principles of natural justice.
26. The evidence is clear that Hot Soup was aware of the case to be made and had the right to present his case and respond to the evidence. The Record indicates Hot Soup was provided detailed information about the Employee’s complaint including specific information concerning the issues and repeated requests for information and evidence.
27. The Record shows Hot Soup was delivered a Demand for Employer Records on December 14, 2023, and the Investigator even followed up with Hot Soup when Hot Soup did not respond to the original deadline.
28. Indeed, the Record indicates that Hot Soup was invited and given every opportunity to respond and provide evidence and submissions.
29. The Investigation Report specifically set out the issues under investigation and requests for information and evidence. In particular, the Investigation Report noted information and evidence that was requested from Hot Soup.
30. The parties, including Hot Soup, were advised to review the Investigation Report carefully and provide further information and clarification. I highlight the following excerpt from the Investigation Report:

Please review the Report carefully. If you wish to respond, please do so in writing to [the Investigator] by 4:00 pm on February 14, 2024. This report and any responses made by the parties will be considered in making the final determination regarding the complaint.

31. The Record and the Determination indicate Hot Soup and the Employee provided further information in response to the Investigation Report.
32. Hot Soup's submission that there was no opportunity to respond to the Investigation Report is unfounded as the Record includes responses from Hot Soup to the Investigation Report. The Determination also notes, "[b]oth parties responded to the [Investigation Report]. I have considered their responses in reaching my decision as required by the [ESA]." [Determination, p R3]
33. Hot Soup also submits the investigation was unfair as its evidence was not accepted. As set out above, the Record indicates that Hot Soup was repeatedly requested to provide information, evidence and clarifications to address issues raised in the complaint. I note it is the nature of the *ESA* complaint, investigation and determination procedure that evidence and information will be collected and determinations made pursuant to the *ESA*. A fair and reasonable procedure will require that parties submit information and evidence to address issues raised in the complaint and may necessarily result in some being accepted, and some not, and those decisions are not alone evidence of bias: (See *Renshaw Travel Ltd.*, BC EST #D050/08, confirmed BC EST # RD085/08). Previous decisions of the Tribunal have also established a fair and reasonable investigation procedure requires that the parties receive information about the issues in dispute and the nature of the evidence and arguments to allow for meaningful response: (see *Unimaxx Networks*, BC EST # D098/12, confirmed BC EST # RD130/12; *Elkin Creek* 2003 Canlii 89137 (BCEST), *Domcor* 2022 BCEST 49 (Canlii)). I find Hot Soup has not shown there was a breach of natural justice in the procedure.
34. In sum, Hot Soup has not shown the Director failed to observe the principles of natural justice in making the Determination.
35. I find there is no merit in this ground of appeal and it is dismissed.

**Has Hot Soup demonstrated new evidence has become available?**

36. On the Appeal Form, Hot Soup alleges that new evidence has become available since the time the Determination was being made.
37. Hot Soup submits it is in a very competitive industry and there are "explicit financial and time costs" incurred to seek evidence and respond to the complaint. Hot Soup submits on the Appeal Form that it could have provided further evidence and information to address the complaint. Hot Soup states: "If had known the full extent of the complaint, before the investigation report being filed, I may have tried to find a way [to provide further information and evidence]." Hot Soup provides new evidence that it submits in support of its position.
38. The test that must be met to introduce new evidence on an appeal is clearly established. In *Davies et al, Directors or Officers of Merilus Technologies Inc.*, BC EST # D171/03, the Tribunal set out the following requirements for introducing new evidence on appeal:
- (a) the evidence could not reasonably have been discovered and presented to the Director during the investigation or adjudication of the complaint;
  - (b) the evidence must be relevant to a material issue from the complaint;

- (c) the evidence must be credible in the sense that it is reasonably capable of belief; and
- (d) the evidence must have high potential probative value in the sense that if believed it could make a difference and lead to a different conclusion in the Determination;

39. Each of the above requirements need to be met by an appellant seeking to submit new evidence. Previous decisions of the Tribunal make it clear that parties are expected to participate in good faith and present all relevant evidence during the initial investigation and determination stage of the complaint. The introduction of new evidence at the appeal stage, that could and should have been introduced previously at the investigation and determination, will generally result in the dismissal of the appeal.

40. The evidence and arguments submitted by Hot Soup do not meet the requirements for new evidence. Hot Soup has not shown the alleged new evidence could not reasonably have been found and presented during the investigation and determination stage. There is no indication Hot Soup could not take part in the investigation nor was prevented or limited in discovering or presenting evidence. As noted above, the Investigation Report specifically sets out the complaint issues and even highlights areas where more evidence and information would be of assistance. As noted above, the Record also shows Hot Soup was delivered a Demand for Employer Records on December 14, 2023, and the Investigator followed up when Hot Soup did not respond to the original deadline.

41. The law is clear that an appellant must meet all the necessary requirements for new evidence. The failure to do so will generally result in dismissal of the appeal (see *Davies et al, supra, Can-Pacific Trading Inc.* BC EST #D 082/11, *Anthony McInnis* 2020 BCEST 9). It is important for the fair and efficient resolution of complaints under the *ESA* that parties participate in good faith during the investigation and adjudication of complaints. It would be contrary to the efficient and fair resolution of complaints under the *ESA* for a party to not participate during the investigation and determination stage and then submit information and evidence on appeal that could and should have been presented earlier (see *Kaiser Stables*, 1997 Canlii 25445 (BCEST), *Dunning and Bourque*, BC EST # D550/97 - limited participation).

42. Hot Soup in this case essentially submits arguments that could and should have been made during the initial investigation and determination stage. As set out in the Record, and even in its own submission, Hot Soup received communications from the Investigator seeking information and evidence as part in the investigation of the complaint and Hot Soup was clearly advised to respond. Hot Soup has also not presented information that did not exist at the time of the investigation or determination. Indeed, Hot Soup's submission even concedes that the information was available and that it could have provided the evidence. Accordingly, I find Hot Soup's submissions do not meet the requirements for new evidence.

43. I find there is no merit in this ground of appeal, and it is dismissed.

#### **Is there an error of law in the Determination?**

44. It is established law that the Tribunal may take a broad view of an appeal (see *Triple S Transmission Inc, dba Superior Transmissions*, BC EST #D141/03). Even though I have found Hot Soup has not demonstrated that the Director failed to observe the principles of natural justice or that there was new evidence, I will also consider Hot Soup's submissions on other grounds in the alternative.

45. While not specifically noted on the Appeal Form, Hot Soup's submission appears to allege that the Director erred in law in finding Hot Soup breached the *ESA* and owed wages, statutory holiday pay, annual vacation pay, compensation for length of service, accrued interest, and penalty amounts totaling \$9,371.60.
46. To show an error of law, Hot Soup has the burden to show a material legal error in the decision. Examples of errors of law may include the following: i) a misinterpretation of misapplication of a section of the *ESA*; ii) a misapplication of an applicable principle of general law; iii) acting without any evidence at all; iv) acting on a view of the facts which could not be reasonably entertained; and v) exercising discretion in a fashion inconsistent with established principle (see *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)* 1998 CanLII 6466).
47. A disagreement with a finding of fact does not amount to an error of law. In cases where there is some evidence, the Tribunal will generally not re-evaluate the evidence or substitute its own view on the same evidence — even if the Tribunal would have come to a different conclusion. The assessment and weighing of evidence is considered a question of fact properly within the purview of the Delegate (see *Britco Structures Ltd.*, BC EST #D260/03; *M.S.I. Delivery Services Ltd.*, BC EST # D051/06, upheld on reconsideration BC EST # RD082/06; *Noor Investments Ltd. (Re)*, 2021 BCEST 50 - calculation of wages owing finding of fact).
48. I have reviewed the Determination and the evidence in the Record and do not find an error of law in the Determination. I have considered the findings and calculation of the amount owing to the Employee for wages, statutory holiday pay, annual vacation pay, compensation for length of service and interest. I find there is no error of law in the findings and calculations and confirm the amounts. While Hot Soup may not agree with the Determination, I find there was evidence the Delegate could rely on to make the findings of fact and arrive at the calculations and conclusions in the Determination.
49. As set out in the Determination, the Delegate considered the conflicting evidence and made a reasoned decision based on evidence and the law. I set out the following from the Determination:
- As the parties have incompatible accounts of whether there was an enforceable contract with a new wage rate, I must weigh the available evidence and decide which account of the wage agreement is more credible based on the relative weights I assign to the evidence. [Determination pR5]
- ...
- I have weighed the parties' evidence, and I prefer the Complainant's evidence of an agreement to a \$24.00 per hour wage rate over the Employer's information that the contract was fabricated and the wage rate remained \$17.50. I find the Employer increased the Complainant's wage to \$24.00 per hour effective February 5, 2022, the given start date in the February 2022 contract, and the Director will enforce this wage agreement. [Determination p R8]
50. It is clearly established in Tribunal decisions that this Tribunal will not re-hear the case, nor will it re-evaluate and re-weigh the evidence and substitute its own view of the same evidence.

51. I have also considered the administrative penalties. I note the administrative penalties found owing by Hot Soup are mandatory in the circumstances (see *537370 B.C. Ltd. (Ponderosa Motor Inn)*, BC EST # D011/06). As stated in the Tribunal decision *STP Canada Enterprises Ltd.*, 2022 BCEST 40 (Canlii), at paragraph 33:

Multiple contraventions can result in multiple administrative penalties. The circumstances in this case clearly establish [the Employer] committed multiple contraventions of the *ESA* and the imposition of multiple administrative penalties was both correct and required by the *ESA*.

52. I find the conclusions in the Determination were supported by evidence and the law and it is not open to this Tribunal to retry the evidence and arguments. I find that Hot Soup has not shown there was an error in law in the Determination.
53. In summary, I find Hot Soup is, for the most part, rearguing its view of the facts and evidence that have already been properly considered and decided by the Delegate in the Determination. Absent an error of law as required under section 112(1) of the *ESA*, this Tribunal cannot re-hear the evidence and ‘second-guess’ the Delegate. I find there is no error in law and would dismiss this ground of appeal.
54. I find this appeal is without merit and has no reasonable prospect of succeeding.

## CONCLUSION

55. Section 114(1)(f) of the *ESA* provides that at any time after an appeal is filed, the Tribunal may dismiss the appeal if there is no reasonable prospect the appeal will succeed.
56. As set out above, I find Hot Soup has not met the required onus to demonstrate that there was new evidence that should have been considered or that the Director failed to meet the requirements of natural justice in making the Determination. I have also considered and held that there was no error of law in the Determination.
57. I find there is no reasonable prospect the appeal would succeed and dismiss the appeal pursuant to section 114(1)(f) of the *ESA*.

## ORDER

58. Pursuant to section 114(1)(f) of the *ESA*, the appeal is dismissed.
59. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination, together with any additional interest that has accrued pursuant to section 88 of the *ESA*.

/s/ John Chesko

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**John Chesko**  
**Member**  
**Employment Standards Tribunal**