

Citation: Verjall Ham  
2025 BCEST 37

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Verjall Ham

- of a Determination issued by -

The Director of Employment Standards

PANEL:	Jeremy Bryant
SUBMISSIONS:	Verjall Ham, on his own behalf Michelle Blendell, counsel for Qathet Regional District
FILE NUMBER:	2024/060
DATE OF DECISION:	March 24, 2025

## DECISION

### OVERVIEW

1. On October 3, 2023, Verjall Ham filed an employment standards complaint alleging the Qathet Regional District (the “**District**”) failed to pay him minimum wage during fire fighting training he attended while working for the District as an on-call fire fighter for the Malaspina Volunteer Fire Department (“**MVFD**”) (the “**Complaint**”).
2. A delegate of the Director of Employment Standards (the “**Delegate**”) completed an investigation of the Complaint and determined the minimum wage protections of the *Employment Standards Act (ESA)* and *Employment Standards Regulation (ESR)* did not apply to Mr. Ham as he was an “auxiliary or volunteer fire fighter employed by a fire department that is organized by a municipality or regional district for the protection of the public” under section 33(c) of the *ESR* (the “**Determination**”). The Delegate reached this conclusion in part on the basis of a factual finding that Mr. Ham “was free to decline to serve as a firefighter and that he did not risk being penalized for declining to attend at incitements [sic], training or other services.” The Delegate therefore exercised their discretion under section 76(3)(b) of the *ESA* to stop investigating the Complaint as they were satisfied the *ESA* did not apply.
3. Mr. Ham appeals the Determination under section 112 of the *ESA* on the grounds the Director of Employment Standards (the “**Director**”) erred in law and failed to observe the principles of natural justice. Mr. Ham takes issue with the Delegate’s factual finding above, and in support of this argument, attached, as part of his final reply submission, two additional documents which he had not provided to the Delegate: a December 17, 2004, Training Practice Attendance Requirements Policy from the District (the “**Policy**”) and Lieutenant Postings from in or around August 2022 and November 10, 2024 (the “**Lieutenant Postings**”). The Policy and Lieutenant Postings were not before the Delegate or included in Mr. Ham’s initial submission. Accordingly, the Tribunal allowed further submissions with respect to whether this new evidence was admissible under section 112(c) of the *ESA*.
4. On appeal, Mr. Ham also argues for specific meanings of the words “auxiliary” and “volunteer” within section 33(1) of the *ESR*, and in addition, says the Delegate was biased in making their decision.
5. The Employment Standards Tribunal (the “**Tribunal**”) sought and received submissions from Mr. Ham, the District, and the Director.
6. I have reviewed the submissions and the record provided to the Tribunal under section 112(5) of the *ESA* (the “**Record**”) and have confirmed the Determination and dismissed Mr. Ham’s appeal. Mr. Ham was a volunteer fire fighter employed by the District and the minimum wage provisions under part 4 of the *ESR* (at all relevant times) did not apply to his service.
7. In his appeal submissions, Mr. Ham refers to the District’s termination of his employment. However, that issue was not a subject of his complaint nor was it before the Director in the investigation of the complaint, and it is therefore not an issue before me in this appeal.

## ISSUES

8. The issues on appeal are as follows:
- I. Are the Policy and the Lieutenant Postings admissible new evidence?
  - II. Did the Director err in law by finding Mr. Ham was an auxiliary or volunteer fire fighter under the *ESR*?
  - III. Did the Director fail to observe the principles of natural justice in making the Determination by showing bias against Mr. Ham?

## ANALYSIS

### I. Are the Policy and Lieutenant Postings admissible new evidence?

9. Under section 112(1)(c) of the *ESA* a person may appeal a determination if evidence has become available that was not available at the time the determination was being made.
10. This ground of appeal is not intended to allow a person dissatisfied with the result of a determination to simply seek out more evidence to supplement what was already before the Director during the complaint process. Instead, the Tribunal has discretion to decide whether to accept new evidence that was unavailable at the time the Determination was made. The test applied by the Tribunal is a strict one and an appellant must satisfy four conditions:
- (a) the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;
  - (b) the evidence must be relevant to a material issue arising 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, on its own or when considered with other evidence, have led the Director to a different conclusion on the material issue.

*Davies et al.*, BC EST # D171/03

11. The Lieutenant Postings list prior fire practice and incident attendance requirements for applicants seeking promotion to Lieutenant positions with the MVFD. They are not relevant to the issue of whether Mr. Ham was a volunteer fire fighter or could refuse training without penalty and accordingly are not admissible as new evidence.
12. The Policy is not admissible as new evidence for the following reasons: the Policy lacks probative value which, if believed, could lead the Director to reach a different conclusion on whether Mr. Ham could refuse to attend training without penalty and whether he was a volunteer fire fighter; with the exercise of due diligence, the Policy could have been discovered and produced to the Director during the investigation; and the Policy appears not to have been followed during the time of Mr. Ham's Complaint.

13. The Policy sets minimum 60% attendance standard for fire department training on a quarter-annual basis. Non-compliance with the attendance standard over multiple quarters could eventually result in dismissal after verbal and written notice. According to the Policy, a fire fighter who failed to meet the attendance standard could jeopardize the safety of the MVFD and the public.
14. The Policy also provides for “excused absences” which count towards attendance for the purpose of calculating the 60% attendance standard. Excused absences include the following: conflict with work schedule; illness or other medical reason; family issues; or out-of-town vacation.
15. Mr. Ham was aware of the Policy and exercising due diligence could have presented it to the Director during the investigation and adjudication of the Complaint prior to the Determination being made. I have reached this conclusion based on Mr. Ham’s submissions:
- He has been aware of the Policy since joining the MVFD in 2014.
  - He claims the Policy was attached to a bulletin board at the fire hall:

“The Document was posted at the Fire Hall affixed to the wall on the bulletin board for everyone to see and adhere to. It is my understanding that the Policy is still affixed to the wall to currently.” ...

“[The Policy] has been posted on the wall as the Policy being in full effect the entire time I was employed at Malaspina Fire Department. Including but not limited to the time period covering the determination.”
  - He was provided the Policy by the acting Fire Chief on October 16, 2024, and provides screen shots of messages that appear to confirm this.
16. Mr. Ham argues he was unable to present the Policy to the Director because it was being withheld by the District. However, the evidence does not support his assertion.
17. Mr. Ham claims he submitted FOIPPA requests for information from the District in 2023 and 2024 but the “main documents” he was requesting were redacted. He also says he used emails and text messages attempting to locate the Policy. However, he has not submitted evidence, nor is there evidence in the Record, showing he made a specific request for the Policy from the District, the fire chief, or the Delegate while she was investigating the Complaint.
18. Mr. Ham provided the Tribunal an email exchange that took place in February 2024 with Ryan Thoms, Manager of Emergency Services for the District. In the exchange, Thoms asks Mr. Ham to request copies of “fire department guidelines and policies” from his Fire Chief as opposed to requesting them from District staff. Mr. Ham responds that he had been requesting a copy of “all the policies and guidelines” from the Fire Chief for over a year and has still not received them.
19. I find this email exchange to be unhelpful. It appears to have occurred in the context of an investigation by an independent third-party into complaints about Mr. Ham’s conduct which, according to the District, resulted in his dismissal. This leads to a reasonable assumption his request for “all policies and guidelines” was related to that investigation as opposed to the Complaint. Mr. Ham states as much in his email response to Thoms writing, his request for policies and guidelines “does relate to the ongoing investigation.”

20. The email exchange is not evidence Mr. Ham actually requested the Policy from the Fire Chief during the Delegate's investigation and prior to the Determination. When he eventually did request the Policy from the Fire Chief, it was freely provided to him on October 16, 2024 (there appears to have been a change in fire chiefs at some point but nothing turns on that fact).
21. While the Policy is inadmissible as new evidence because Mr. Ham was aware of the Policy and could have presented it to the Director if he had used due diligence, the Policy also lacks relevance, credibility, and probative value.
22. At first blush the Policy seems relevant to the issue of whether Mr. Ham could refuse fire fighting training without penalty, which was one of the factors the Delegate considered in determining he was a "volunteer fire fighter" under the *ESR* (although I note her conclusion on this fact was not limited to attending "training" as the Policy is). In the Determination, the Delegate found Mr. Ham had not provided evidence "in support of his position that he was not free to decline to serve as the [District's] firefighter," so she accepted the District's evidence Mr. Ham was free to decline to attend at incidents, training, or other services without being penalized.
23. The District submits the policy was not enforced during the time period covered by the Complaint (October 3, 2022 to October 3, 2023), there has been no discipline under the Policy since about 2021, and there have been no dismissals under the Policy since 2016. The District provided the Tribunal attendance records which support those assertions. They also say the Policy was rescinded on December 1, 2022. Mr. Ham suggests, without evidence, the District applied the Policy in a discriminatory manner (there is no allegation Mr. Ham received notice for failing to meet attendance standards under the Policy). He says he was continually told by the Fire Chief "it was the Policy" and the Policy was posted on the wall during the time he was employed at the MVFD.
24. Whether or not the Policy has been followed and is a credible source of information, it lacks probative value to the material issue of whether Mr. Ham was a volunteer fire fighter. If admitted into evidence, the Policy would not on its own or considered with the other evidence cause the Delegate to reach a different conclusion on Mr. Ham's status as a volunteer fire fighter or the fact (whether material or not) he could refuse attendance at fire fighting training without penalty due to the broadly defined excused absences.
25. Even if the Policy applied to Mr. Ham at the relevant times, which the District disputes, it would have allowed him to freely refuse fire fighting training due to a conflict with his work schedule, illness or other medical reason, family issues, or out-of-town vacation. Such refusals would not count towards the Policy's 60% attendance requirement and could not result in notice or eventual dismissal. It makes abundant sense for a volunteer fire department to at least maintain some standard of training attendance to ensure the safety of its members and the public. Accordingly, even if the Policy were admitted into evidence and applied to Mr. Ham, it would not change his status as a "volunteer fire fighter."
26. The Policy and Lieutenant Postings are not admissible new evidence.

## **II. Did the Director err in law by finding Mr. Ham was an auxiliary or volunteer fire fighter under the *ESR*?**

### **The Law**

27. The Tribunal applies the definition of "error of law" from the BC 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.):

1. A misinterpretation or misapplication of a section of the Act (or the *ESR*);
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.

28. The *Gemex* definition of "error of law" should not be applied so broadly as to include errors of fact alone or errors of mixed law and fact which do not contain extricable errors of law: *Britco Structures Ltd.*, BC EST # D260/03.

29. Section 127 of the *ESA* gives the Lieutenant Governor in Council the power to make regulations excluding a class of persons from parts of the *ESA* and *ESR*.

### **The Delegate's Determination**

30. While assessing the Complaint, the Delegate correctly identified a preliminary issue as to whether Mr. Ham was excluded under section 33(c) of the *ESR*:

#### **Exclusions from Parts of the Act and this regulation**

**33** Parts 2 and 4 to 8 of the Act and Part 4 of this regulation do not apply to any of the following:

- (c) an auxiliary or volunteer fire fighter employed by a fire department that is organized by a municipality or regional district for the protection of the public.

31. Mr. Ham argues the Delegate misinterpreted this section and acted on a view of the facts which could not reasonably be entertained in determining he was an "auxiliary or volunteer fire fighter." He does not dispute the MVFD was organized by the District for the protection of the public.

32. The Delegate made the following relevant findings of fact based on the evidence provided by the parties:

I find the official web site of the Qathet Regional District describes the MVFD as being dedicated to public safety and community service and indicates it relies upon volunteers.

The parties agree, and the payroll records show that the complainant was paid quarterly for varying hours spent attending at incidents, meetings and training. I accept the Complainant was paid an hourly wage and an honorarium and I find the payroll documents show his remuneration followed the Respondent's Honorarium Policy.

The Complainant has not provided evidence to the Branch in support of his position that he was not free to decline to serve as the Respondent's firefighter. So, I accept the Respondent's evidence that the Complainant was free to decline to serve as a firefighter and that he did not risk being penalized for declining to attend at incitements [sic], training or other services.

The Complainant does not dispute that he is an on-call firefighter with the MVFD.

The Complainant confirmed he is a part time firefighter with the Respondent as well as the Powell River Fire Departments and that he is also employed full time with the Tla'amin Nation as Enforcement Officer. Additionally, the Complainant confirmed that he works part time as a Transit Bus Driver. The Complainant reported he is also self-employed with a "Malaspina tree service business".

(Determination at pages R5-R6)

### The Parties' Arguments

33. Mr. Ham argues the Director misinterpreted the *ESR* insofar as she found he was an auxiliary fire fighter. He relies on the plain language dictionary meaning of "auxiliary" which includes the following: aiding; attendant on; ancillary; providing supplementary or additional help and support. He argues, the MVFD is the only fire department within the applicable fire protection boundary and there is no "fulltime career staffing of firefighters...they can be auxiliary to."
34. The Delegate wrote in the Determination: "I find that when the Respondent called upon the Complainant to serve as firefighter, he did so on a voluntary as well as auxiliary basis." However, she concluded: "the Act does not apply to Verjall Ham's complaint because he is a volunteer fighter [sic]."
35. As discussed below, an "auxiliary or volunteer fire fighter" is a category of fire fighter distinguished from a "regular" fire fighter in British Columbia. Even if I accept Mr. Ham's definition of "auxiliary," section 33(c) of the *ESR* contains the disjunctive word "or" in "auxiliary **or** volunteer fire fighter." Mr. Ham need have only met the definition of volunteer fire fighter to be excluded from the minimum wage under part 4 of the *ESR*. The Delegate clearly assessed the appropriate question and did not err in law by concluding Mr. Ham was employed in the category of "auxiliary or volunteer fire fighter".
36. Mr. Ham also argues the Delegate erred in law because the facts could not reasonably support her conclusion he was a volunteer fire fighter based on the different definitions of "employee" and "volunteer."
37. Mr. Ham cites Black Law dictionary (Revised 4<sup>th</sup> Edition) for the following definition of volunteer:

A person who gives his services without any express or implied promise of remuneration.

38. He also cites the definition of “employee” in section 1 of the *ESA* which includes:

- (a) a person ... receiving or entitled to wages for work performed for another.

39. He argues that as he received monetary compensation by way of an honorarium, hourly wage, and other benefits from the District, he was an employee not a volunteer.

40. Mr. Ham also submits:

- the Canda Revenue Agency determined he was an employee for income tax purposes, while he was working for the District;
- when he was an officer on duty he was obliged to immediately respond and attend to fire fighting calls;
- MVFD chief Dave Keiver is quoted in an online newspaper article for the Powell River Peak as referring to fire fighters as “paid on call” as opposed to volunteers;
- he was regularly employed by the District since 2012; and
- he had fixed training and meeting days as a fire fighter.

41. Mr. Ham relies on the Policy and Lieutenant Postings, claiming the mandatory attendance requirements were a condition of his employment, meaning he was not a volunteer fire fighter. He claims the Policy has been relied on to terminate past employees.

42. The District does not dispute Mr. Ham was an employee under the *ESA*. However, they maintain he was nonetheless a “volunteer fire fighter” within the meaning of section 33 of the *ESR*.

43. They argue the use of the word “employed” in “a volunteer fire fighter **employed**” by a regional district suggests, “Parts 2 and 4 to 8 of the *ESA* and Part 4 of the *ESR* do not apply to the volunteer fire fighter notwithstanding that they are an employee.” The definition of “volunteer fire fighter” was intended to be broader than the typical meaning of “volunteer.” They submit:

Since employees are generally entitled to pay when they work, the use of the term “employed” indicates an intention to include firefighters providing service on a voluntary on-call basis (i.e., if and when they choose, without penalty for declining to serve) who also receive some remuneration for their services.

44. They also argue if a volunteer fire fighter was expected to provide service without any expectation of pay (i.e. was strictly a volunteer under the usual meaning) there would be no need to apply exclusions to such persons, as the *ESA* does not apply to volunteers.

45. The District also argues in the British Columbia fire fighting industry the term “volunteer fire fighter” has a specific meaning referring to persons providing fire fighting services on an on-call voluntary basis who may also receive remuneration. They cite the facts from a Tax Court of Canada case *Merritt (City) v. Canada (Minister of National Revenue – MNR)*, [1999] TCJ No. 319 (QL) and from *Surrey (City) (Re)*, BCEST #D411/97, 1997 CanLII 25924 (BCEST) at paragraph 10 (“**Surrey City**”):



...Surrey has utilized a combination of “regular” and “volunteer” firefighters. “Regular” firefighters are full-time Surrey employees and members of the bargaining unit represented by the Surrey Firefighters’ Association, Local 1271. “Volunteer” firefighters are not part of the bargaining unit, attend one evening training session each week, respond to calls (they are supplied with a pager) on an “as-needed” basis and are paid three times each year; although some volunteers earn as much as \$15,000 per year, the average per annum range is about \$7,000 to \$10,000.

46. The District further relies on section 34(k) of the *ESR* which exempts “a fire fighter employed by a paid fire department as defined in the *Fire Department Act*” from the hours of work and overtime standards in Part 4 of the *ESA*. Section 1 of the *Fire Department Act*, RSBC 1996, c 143, defines “paid fire department” as a “fire brigade of which one or more members, other than the Fire Chief, receive full time remuneration for their service as members.” The *Fire Department Act* also sets out platoon systems on which the fire brigades work.

### Analysis

47. I acknowledge there is a conceptual difficulty in separating the ordinary meaning of “volunteer” from the definition of “volunteer fire fighter.”

48. The Tribunal is occasionally tasked with determining whether a person is a volunteer or employee. In one such case, *Shawnee Venables (Re)*, 2018 BCEST 11, the Tribunal Member described the ordinary meaning of volunteer at paragraph 30:

Volunteers are typically individuals who volunteer their services for civic, charitable or humanitarian reasons, without expectation of pay, and offer their services freely and without coercion. Volunteer services are not usually offered on a consistent full-time schedule; rather, they are required on an “as-needed” basis, and their services are different in scope, duties and expectations from paid positions. Volunteers are often subject to specific conditions, including, for example, criminal record or credit checks, and must be reliable. Volunteers may be offered reimbursement for out of pocket expenses.

49. In this case the proper question is not whether Mr. Ham was a “volunteer” but whether he was a “volunteer fire fighter.” Thus, while the ordinary meaning definition of volunteer is helpful, it is not determinative.

50. While the Delegate did not refer to the modern doctrine of statutory interpretation, I find it to be a useful starting point, especially as the term “volunteer fire fighter” is not defined in the *ESA* or in the *ESR*, and appears not to have been previously defined in the Tribunal’s jurisprudence.

51. The modern doctrine of statutory interpretation requires the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament: *Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC).

52. The object of the *ESA* includes its purpose in section 2(a) to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment

(including the minimum wage). However, section 127(2) gives the Lieutenant Governor in Council the power to make regulations excluding classes of persons from all or part of the *ESA* or *ESR*.

53. I agree with the District, a definition of volunteer fire fighters which treats them equally with the ordinary meaning of volunteers would be inconstant with the scheme of the *ESA* and the intention of the Lieutenant Governor because it would render section 33(c) of the *ESR* redundant, as volunteers are not entitled to the minimum standards of the *ESA*.
54. The context of the fire fighting industry in British Columbia and a harmonious reading of sections 33(c) and 34(k) of the *ESR* which has a separate exclusion for fire fighters employed by a paid fire department as defined in the *Fire Department Act* also merit consideration when attempting to determine the intention of the Lieutenant Governor in Council.
55. As is noted in *Surrey City*, fire fighters in British Columbia typically serve in one of two categories, “regular” or “auxiliary or volunteer.” Regular fire fighters are typically unionized and receive full time remuneration for their service on platoon systems under the *Fire Department Act*. Auxiliary or volunteer fire fighters typically attend regular training sessions, respond to calls on an as-needed basis, and may be compensated for their service.
56. I have considered these factors against the Tribunal’s ordinary meaning definition of “volunteer,” which applies in some ways (as-needed service requirements, freedom of service without coercion, not scheduled full-time, differences from full-time paid positions, and safety training conditions) and not others (expectations of pay, regular training schedules).
57. I conclude an appropriate definition of an auxiliary or volunteer fire fighter for the purpose of section 33(c) of the *ESR* is: a person employed by a fire department that is organized by a municipality or regional district for the protection of the public who is not a fire fighter employed by a paid fire department as defined in the *Fire Department Act* and:
- a. is not scheduled full-time;
  - b. responds to fire fighter incident calls on an as-needed basis;
  - c. typically attends regular fire fighter training sessions;
  - d. may receive compensation for their service; and
  - e. offers their service freely and without coercion.
58. The facts surrounding Mr. Ham’s service with the District satisfied this definition. I have determined the Policy and Lieutenant Postings are inadmissible new evidence, however, even if I had allowed them, they would not have on their own or when considered with the other evidence, have led the Director to conclude Mr. Ham was not a volunteer fire fighter. As explained above, the Lieutenant Postings are not relevant, and the Policy allows for excused absences from training in broad circumstances so he could effectively refuse training without penalty. Mr. Ham was able to offer his services freely without coercion while maintaining his other full-time and part-time employment.
59. I cannot find the Delegate erred in her interpretation of the meaning of “volunteer fire fighter” in the *ESR* or that she acted on a view of the facts which could not reasonably be entertained.

### III. Did the Director fail to observe the principles of natural justice in making the Determination by showing bias against Mr. Ham?

60. 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.

61. Mr. Ham claims the Director of Employment Standards failed to observe the principles of natural justice in making the Decision as the Delegate acted with bias against him claiming the following:

...[T]he [Delegate] consistently referred to her own experiences at the Employment Standards branch with auxiliary workers being paid on call and using the words interchangeably when both definitions are separate having exclusive meaning. She kept raising her voice and was adamantly discouraging me from pursuing this case and asking every time for me to withdraw my complaint. In her experience the part time "Auxiliary" workers are supplemental to the fulltime staff which fits the auxiliary definition, which is opposite to us as we are the main and only firefighters in our jurisdiction. She did say her paid on call staff are not volunteers though which does correlate to us as not volunteers as paid on call. I feel she was following her personal experiences and not procedural fairness using an abuse of discretion because I did not agree with her. She explained that Employment Standards does not contain a definition of the words volunteer or auxiliary and she was using her discretion, I felt like I was being dismissed each time we talked failing to acknowledge my submissions with any weight.

62. The Director has disputed the factual correctness of Mr. Ham's allegations regarding comments about other Employment Standards Branch employees. I do not have to resolve these discrepancies because the employment status of other employees is not relevant. My review of the Determination and the Record indicates the Delegate focussed on the correct evidence regarding Mr. Ham's service with the District.

63. Even if the Delegate opined on her personal experiences and the chances of success on the Complaint, such commentary would not offend the standards of a reasonable apprehension of bias under the *ESA*. The Tribunal explained as much in *Director of Employment Standards (Re Milan Holdings)*, BC EST # D313/98 at page 13:

In making this point, it is equally clear that the Director's delegates must conduct themselves professionally and must exercise objective good judgment by proceeding where the evidence takes them in the course of an investigation. In that sense, the investigation must of course be "unbiased". A delegate cannot enter upon an investigation with a personal agenda, with a financial stake in the outcome or with a mind closed to the outcome. On the other hand, **the Director's delegate cannot be expected to check his or her experience at the door. Based on experience, patterns will inevitably arise within various firms or sectors that give rise to an expectation that an investigation will probably conclude a certain way. That is experience, not bias.** In such circumstances, however, the overriding obligation of the Director or her

delegate keep their mind open in good faith to the particular facts and evidence before them in individual cases.

(emphasis added)

64. While this approach may seem informal when compared with a court or quasi-judicial tribunal setting, it is consistent with standards of procedural fairness expected of the Director while exercising their dual role as investigator and adjudicator: *Re Milan Holdings* at p. 12.
65. As the District observed in their submissions, the Delegate's suggestion Mr. Ham may want to withdraw his Complaint was made on or around April 16, 2024, after she had already completed much of the investigation of the Complaint. By that point she could reasonably be expected to have had an expectation the investigation would conclude in the way it did.
66. My review of the Record and the Determination demonstrates the Delegate clearly kept her mind open in good faith to the facts and evidence regarding Mr. Ham's service with the MVFD and dutifully applied them to the language of section 33(c) of the *ESR*. There is no evidence she acted from a personal agenda, with a financial stake in the outcome, or with a mind closed to the outcome.
67. The Director did not fail to observe the principles of natural justice in making the Determination. Mr. Ham has not demonstrated a reasonable apprehension of bias against him.

## CONCLUSION

68. Mr. Ham has not demonstrated the Director erred in law or failed to observe the principles of natural justice in the Determination which found he was a volunteer fire fighter employed by a fire department organized by a regional district for the protection of the public under section 33(c) of the *ESR* and was not entitled to the minimum wage under Part 4 of the *ESR*. I have confirmed the Determination.
69. I note section 16(1) of the *ESA* was amended on April 22, 2024, from requiring employers to pay "at least the minimum wage as prescribed in the regulations" to requiring they pay "at least the minimum wage as set out in sections 16.1 and 16.2" of the *ESA*. As sections 16.1 and 16.2 are in Part 3 of the *ESA*, auxiliary or volunteer fire fighters appear to no longer be excluded from the minimum wage requirement under section 33(c) of the *ESR* effective April 22, 2024, subject to any future legislative amendments.
70. The Tribunal has held rights vest at the time of the filing of a complaint, unless a clear contrary intention can be found in the amending statute: *Anchorage Holdings Co. (Re)*, BC EST #D039/03 at para. 44.
71. Mr. Ham's minimum wage complaint was filed on October 3, 2023, during which time he was excluded from the statutory minimum wage by virtue of section 33 and Part 4 of the *ESR* and the *Employment Standards Amendment Act, 2024* does not apply retroactively.

**ORDER**

- <sup>72.</sup> Pursuant to section 115(1)(a) of the *ESA*, I confirm the Director's June 3, 2024, Determination and dismiss Mr. Ham's appeal.

*/S/ Jeremy Bryant*

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**Jeremy Bryant**  
**Member**  
**Employment Standards Tribunal**