

Citation: Complete Traffic Management Corp. (Re)  
2024 BCEST 43

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Complete Traffic Management Corp. (the “Appellant”)

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** John Chesko

**FILE NO.:** 2024/011

**DATE OF DECISION:** May 22, 2024

## DECISION

### SUBMISSIONS

Jesse Sylvester on behalf of Complete Traffic Management Corp.

### OVERVIEW

1. Complete Traffic Management Corp. (“Appellant”) appeals a determination issued on December 29, 2023 (“Determination”), by a delegate (“Delegate”) of the Director of Employment Standards (“Director”).
2. The Determination held the Appellant had contravened the *Employment Standards Act* (“ESA”) in respect of the employment of Jeffrey Donaldson (“Employee”). The Determination ordered the Appellant to pay the Employee compensation for length of service, annual vacation pay, and interest totaling \$204.41. The Determination also levied an administrative penalty of \$500 for a total amount payable of \$704.41.
3. The Appellant appeals on the two grounds that the Director failed to observe the principles of natural justice in making the Determination and that the Director erred in law.

### BACKGROUND

4. The Appellant operates a traffic control business in New Westminster, B.C., that falls within the jurisdiction of the *ESA*.
5. The Employee was employed as a traffic control person from March 7, 2022, to September 2022. The last day of employment was in dispute.
6. The Employee provided two weeks notice of resignation to the Appellant on August 28, 2022, advising that his last day would be September 9, 2022.
7. The Employee was scheduled for 31.5 hours work in the first week, but was not scheduled for any work in the second week. When the Employee found that he was not scheduled for any work in the second week, he advised the Appellant that he considered he was terminated and that he expected all outstanding wages would be paid within 48 hours. The Appellant advised that it now considered that the Employee had immediately resigned.
8. The Employee and the Appellant were unable to agree on wages owed.
9. The Employee filed a complaint under section 74 of the *ESA* alleging that the Appellant contravened the *ESA* by failing to pay wages earned, statutory holiday pay, illness leave pay, and compensation for length of service.
10. An investigative delegate (“Investigative Delegate”) followed up with the parties and requested evidence and submissions from each side about their respective positions.

11. The Investigative Delegate prepared a report for the Appellant and the Employee dated November 3, 2023, summarizing the information provided by the Appellant's Representative and the Employee and included a list of relevant records and documents ("Investigation Report"). The Appellant and the Employee were requested to review the Investigation Report and provide a response within a deadline.
12. The Investigative Delegate did not make any findings in the Investigation Report. As noted above, the Investigation Report summarized the information provided by the parties. I also note the Investigation Report set out that the main issues were whether the Employee was owed wages, statutory holiday pay, sick pay, and compensation for length of service.
13. The Appellant and the Employee reviewed the Investigation Report and had the opportunity to respond and provide further clarification. The Investigation Report and any responses received from the parties within the required time were submitted to the Delegate for a determination. I note the Appellant did not submit any further clarification.
14. The Delegate issued the Determination dated December 29, 2023.
15. The Determination held that the Employee provided notice of termination to the Appellant and the Appellant had subsequently terminated the Employee during the notice period. Applying section 63 of the *ESA*, the Delegate held the Employee was entitled to compensation for length of service. As stated in the Determination:

I find that, in not scheduling [the Employee] for any hours in the second week of his notice period, [the Appellant] terminated [the Employee] effective 2 September 2022. Accordingly, I find that [the Appellant] is liable to pay [the Employee] the lesser of the wages that he would have earned in the second week of the notice period or one week's wages based on his length of service.

...

I find that, had [the Appellant] not terminated [the Employee] on 2 September 2022, [the Employee] would have earned statutory holiday pay for Labour Day, 5 September 2022. I find, based on the small amount of work dispatched, that [the Employee] would not have been scheduled for any additional work. I also note that the same result would apply if it were determined that [the Appellant] did not terminate [the Employee] but simply allowed him to work out the remainder of the notice period to 9 September 2022.
16. As noted above, the Determination held the Appellant failed to pay the Employee compensation for length of service, annual vacation pay, and interest totaling \$204.41. In addition, the Determination also levied an administrative penalty of \$500 for a total amount payable of \$704.41.
17. I also note the Determination dismissed other claims by the Employee for additional wages, statutory holiday pay, and illness leave pay.

## **ARGUMENTS**

18. On the Appeal Form, the Appellant submits that the Director failed to observe the principles of natural justice in making the Determination and the Director erred in law.

19. The Appellant sets out submissions and evidence in support of the Appellant's appeal.
20. The Appellant submits the Employee's evidence “of the events that happened leading up to the stat holiday are false.”
21. The Appellant submits that the Employee chose to voluntarily resign earlier than the original two weeks of working notice given, and the Determination erred in finding otherwise. The Appellant argues, “As the stat holiday was on September 5th, 2022, [the Appellant] should not have to pay the stat holiday pay when the employee voluntarily resigned from his position before the end of his two weeks notice.”
22. The Appellant submits that the case should be “further reviewed with the evidence provided” and the Determination should be reversed in favour of the Appellant.

### **ANALYSIS**

23. These reasons are based on the written submissions of the Appellant, the Determination, and the Record.
24. On receiving the Appellant’s appeal, the Director provided the Tribunal, the Appellant, and the Employee with the section 112(5) record (“Record”) for purposes of the appeal. The Tribunal requested submissions on the completeness of the Record from the parties. As the Tribunal did not receive any objections to the completeness of the Record from the parties, the Tribunal accepts the Record as complete.

### **Appeal of the Determination**

25. 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.

26. An appeal is limited to the specific grounds set out in the *ESA*. An appellant has the onus to show the appeal meets one or more of the specified grounds of appeal. An appeal is not a new hearing of the case nor is it an opportunity to resubmit an appellant's facts and arguments to a different decision-maker and ‘try again.’

### **Failure to Observe Principles of Natural Justice**

27. The Appellant alleges the Director failed to observe the principles of natural justice in making the Determination.
28. 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).

29. A party alleging failure to comply with natural justice must provide evidence in support of the allegation. It isn't sufficient to simply allege that there was a failure of natural justice without more. An appellant must submit 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).
30. I have reviewed the Record and considered the Appellant's submissions. I find there is no basis for the Appellant'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. The Appellant does not point to any specific deficiencies in the procedure, but puts forward facts and arguments that were previously before the Delegate and submits that the case should be "further reviewed."
31. The Record indicates the Appellant was aware of the case to be made and had the right to present their case and respond to the evidence. The Record also indicates the Investigative Delegate conducted an investigation of the issues and the parties had ample opportunity to present their side of the story. The Record shows the parties were involved in the investigation process and were able to respond and provide evidence and submissions.
32. In sum, the Appellant has not shown that the Director failed to observe the principles of natural justice in making the Determination.
33. I find there is no merit in this ground of appeal and it is dismissed.

#### **Error of Law**

34. On the Appeal Form, the Appellant also alleges the Director erred in law in making the Determination.
35. To show an error of law, the Appellant has the burden to show a material legal error in the decision. Examples of errors of law may include: 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 that is inconsistent with established principle (see *Gemex Developments Corp. v. British Columbia (Assessor of Area #12)* 1998 CanLII 6466).
36. 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. The assessment and weighing of evidence is considered a question of fact properly within the purview of the Delegate.
37. I have reviewed the Determination and the evidence in the Record and do not find an error of law in the Determination. The Delegate properly considered the submissions and evidence and came to a reasoned conclusion.
38. I find there was no error of law in the Determination in finding the Employee was owed compensation for length of service. The Determination properly considered the law and the evidence and made findings that are supported by evidence. As noted in the Determination, section 63 of the *ESA* sets out the

statutory requirement for length of service compensation. The relevant portion of section 63(6) of the *ESA* states:

- 63 (6) If, after 3 consecutive months of employment, an employee gives notice of termination to the employer and the employer terminates the employment during that notice period, the employer is liable to pay the employee an amount equal to the lesser of
- (a) an amount in money equal to the wages the employee would have earned for the remainder of the notice period, or
  - (b) an amount in money equal to the amount the employer is liable to pay on termination.

39. The finding that the Appellant terminated the Employee prior to the end of the working notice was supported by evidence and the law. The finding that the Employee was entitled to the amount of compensation for length of service that the Employee would have earned in the remainder of the notice period is also consistent with the facts and law (see sections 44, 45 and 63(6) of the *ESA*).

40. I find there was evidence supporting the Delegate's conclusions and that it is not open to this Tribunal to re-consider the evidence. I find there was no error of law in the Determination that the Employee was entitled to the compensation for length of service found.

41. I have also considered the calculation of the amount owing to the Employee for compensation for length of service, annual vacation pay, and interest. I find there is no error of law in the calculation and confirm the amounts.

42. Although the Appellant may not agree with the Determination, I find that there was evidence the Delegate could rely on to make the findings of fact and arrive at the calculations and conclusions in the Determination. As noted above, it is clearly established in Tribunal decisions that this Tribunal will not re-hear the case, nor can it re-evaluate the evidence and substitute its own view of the same evidence.

43. Finally, I have also considered the administrative penalty levied in the Determination. The law is clear that the administrative penalty owed by the Appellant is mandatory in the circumstances and there is no provision in the *ESA* for it to be cancelled (see *537370 B.C. Ltd.*, BC EST # D011/06).

44. In summary, I find the Appellant is, for the most part, rearguing its view of the facts and evidence that has already been properly considered and decided in the Determination. Absent an error of law as required under section 112(1) of the *ESA*, this Tribunal cannot re-hear (or 'further review') the evidence and 'second-guess' the Delegate.

45. I find there is no error of law and would dismiss this ground of appeal.

### **Summary dismissal**

46. 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.

47. I find there is no reasonable prospect the appeal would succeed and dismiss the appeal.

**ORDER**

48. Pursuant to section 114(1)(f) of the *ESA*, the appeal is dismissed.

49. 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*.

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