

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Metasoft Systems Inc.  
("Metasoft")

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** David B. Stevenson

**FILE No.:** 2023/186

**DATE OF DECISION:** June 3, 2024

## DECISION

### SUBMISSIONS

Trevor Skillen	on behalf of Metasoft Systems Inc.
Kenneth Yeager	on his own behalf
Dawn Rowan	delegate of the Director of Employment Standards

### OVERVIEW

1. This decision addresses an appeal filed under section 112 of the *Employment Standards Act* (“ESA”) by Metasoft Systems Inc. (“Metasoft”) of a determination issued by Dawn Rowan, a delegate of the Director of Employment Standards (“deciding Delegate”), on November 9, 2023 (“Determination”).
2. The Determination found Metasoft had contravened sections 16 and 17 of the *ESA* in respect of the employment of Kenneth Yeager (“Mr. Yeager”) and ordered Metasoft to pay Mr. Yeager the amount of \$15,419.70, an amount that included concomitant vacation pay and interest under section 88 of the *ESA*, and to pay administrative penalties in the amount of \$1,000.00. The total amount of the Determination is \$16,419.70.
3. The Tribunal has received an appeal from Metasoft alleging the deciding Delegate failed to observe principles of natural justice in making the Determination.
4. In correspondence dated February 1, 2024, the Tribunal, among other things, acknowledged having received the appeal, requested the section 112(5) record (“record”) from the Director and notified the other parties that submissions on the merits of the appeal were not being sought at that time.
5. The record has been provided to the Tribunal by the Director and a copy has been delivered to each of the parties, who have been provided with the opportunity to object to the completeness of the record.
6. No objection to the completeness of the record has been received and, for the purposes of this appeal, I accept it as being complete.
7. My review of the submission received with the appeal, the record, the Determination, and the reasons for Determination indicated further submissions from the parties were warranted.
8. In correspondence dated April 23, 2024, the Tribunal invited the Director and Mr. Yeager to make submissions on the merits of the appeal.
9. The Tribunal received submissions from the Director and Mr. Yeager. Metasoft was invited to reply to those submissions, but has not done so.

## ISSUE

10. The issue in this appeal is whether Metasoft has shown that the deciding Delegate failed to observe principles of natural justice in making the Determination.

## THE DETERMINATION

11. By way of background, the reasons for Determination (“reasons”) recite the corporate information relating to Metasoft and indicate Metasoft operates a technology company in Vancouver, BC, and that Mr. Yeager was employed as a sales representative from February 11, 2002, to May 13, 2022.
12. Mr. Yeager filed a complaint alleging Metasoft had contravened the *ESA* by failing to pay overtime wages and statutory holiday, and by failing to pay at least minimum wage.
13. The complaint was investigated by a delegate of the Director (“investigating Delegate”), who produced an Investigation Report (“IR”), dated July 25, 2023.
14. Metasoft and Mr. Yeager were invited to respond in writing to the IR. Both provided responses.
15. The deciding Delegate identified three issues:
1. Is Mr. Yeager owed overtime wages; if so, how much;
  2. Is Mr. Yeager owed statutory holiday pay or premium pay for work performed on a statutory holiday; if so, how much; and
  3. Did Metasoft pay Mr. Yeager at least minimum wage; if not, how much is he owed?
16. On the first issue, the deciding Delegate found the evidence was insufficient to support a claim for working outside of his regular working hours, which the deciding Delegate found to be eight hours per day, Monday to Friday.
17. On the second issue the deciding Delegate found Mr. Yeager received statutory holiday pay during the wage recovery period and was not owed any additional statutory holiday pay.
18. On the third issue, the deciding Delegate indicated there was no dispute that Mr. Yeager had not been paid at least minimum wage for all hours worked in each pay period. The deciding Delegate found he was owed regular wages in the amount set out in the Determination, which included concomitant vacation pay.
19. Based on the conclusions reached, the deciding Delegate found Metasoft had contravened sections 16 and 17 of the *ESA* and imposed administrative penalties for those contraventions.

## ARGUMENTS

20. As indicated above, Metasoft has appealed on the natural justice ground of appeal set out in section 112(1) of the *ESA*.

21. While the written submission which accompanied the appeal does not specifically address how this ground of appeal arises from the Determination, the substance of the appeal is that the deciding Delegate erred in calculating the time worked on four days in the recovery period. The assertion made in the appeal submission is that:
- Mr. Yeager only signed in on these four days and did not send/receive any emails or showed [sic] any activity. Therefore, it is appropriate to adjust the calculation of his paid days to accurately reflect his actual work attendance.
22. At this Panel's invitation, the Director has provided a response to the appeal. In that submission, the Director notes that the principles of natural justice applicable in this case require that Metasoft know the case against it and have a reasonable opportunity to respond. The Director says Metasoft received that opportunity. The Director submits there is a burden on Metasoft to demonstrate a breach of natural justice and that Metasoft has not met that burden. The Director asserts Metasoft has not provided any evidence showing the principles of natural justice have been breached.
23. The Director says that, while Metasoft contends Mr. Yeager should not be paid for the four days, they do not dispute the information relating to those days was contained in the IR and that there was no indication in their response to the IR that the four days should not be considered as days worked.
24. In her response, the Director also makes the following points:
1. The Employee Handbook provided by Metasoft during the investigation indicates the normal work week consists of 5 days – Monday to Friday – eight hours long, and each of the days in question fell within the regular work week; and
  2. The record shows that information provided by Metasoft indicates Mr. Yeager signed in to work on each of those days.
25. At no time during the complaint process did Metasoft contend Mr. Yeager had signed in but not performed work on those days. The Director also notes that on one of the days in question, Metasoft's appeal documents show two emails were sent out by Mr. Yeager.
26. Mr. Yeager has provided a response in which he says the assumption upon which the appeal submission of Metasoft is based – that email activity is the only indicator of work – is not true. He points out that the records provided by Metasoft show there were several days where he sent few emails (between one and four) over the course of his day. He submits the best indicator of work activity are the daily Sales Stats sheets Metasoft publishes showing a person's previous day's outgoing phone call and email numbers. He notes that Metasoft has not referenced, or submitted, those sheets in their appeal, but if provided, would reveal a more accurate account of his daily activity on the days in question than email activity. He has attached one such sheet with his submission. He has also attached two of his monthly work calendars showing he had sales appointments on two of the days that have been questioned by Metasoft. Lastly, he makes the observation that "[a]ny lack of sales activity would be flagged immediately and I would have been challenged on this by management."
27. Metasoft has been given an opportunity to respond to the submissions of the Director and Mr. Yeager but has provided none.

## ANALYSIS

28. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*, which says:

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.*

29. An appeal is not simply another opportunity to argue the merits of a claim to another decision maker. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the determination under one of the statutory grounds.

### Natural Justice

30. A party alleging a failure to comply with principles of natural justice, as Metasoft has done in this appeal, must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99. I find nothing in the appeal that would support a finding the deciding Delegate, or the investigating Delegate, failed to comply with principles of natural justice.

31. The Tribunal has briefly summarized the natural justice principles that typically operate in the complaint process, including this complaint, in *Imperial Limousine Service Ltd.*, BC EST # D014/05:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the Act, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party: see *BWI Business World Incorporated*, BC EST # D050/96.

32. Provided the process exhibits the elements of the above statement, it is unlikely a failure to observe principles of natural justice in making the Determination will be found. On the face of the material in the record, Metasoft was provided with the opportunity required by principles of natural justice to present their position to both the investigating and the deciding Delegates. Metasoft has provided no objectively acceptable evidence showing otherwise.

33. There is nothing in the reasons, record, appeal form, or submissions showing that the investigating Delegate, or the deciding Delegate, failed to comply with the principles of natural justice in making the Determination. The record shows Metasoft was aware of the details of Mr. Yeager's complaint and was given a full opportunity to respond to it before the Determination was made.

34. I find Metasoft has not shown the deciding and/or investigating Delegate failed to observe principles of natural justice.
35. In any event, nothing in Metasoft's appeal has not shown that, as a matter of fact, that Mr. Yeager did not work those days. I reiterate what I have stated above – that there is a burden on Metasoft to show there is an error in the Determination on one of the statutory grounds. That burden has not been met.
36. I will add one comment to this decision. The record indicates Metasoft was issued a Demand for Employer Records (“Demand”) relating to Mr. Yeager, and while a considerable amount of material was provided, the Sales Stat sheets referred to by Mr. Yeager was not among them. This was information that would be included in the Demand and which should have been provided. The failure of Metasoft to provide this information, particularly as it appears to bear on the relevance of their appeal submissions is unforgivable and seriously diminishes the validity of their representations in the appeal. I would also note this deficiency appears to bear out Mr. Yeager's contention during the investigation process, that Metasoft may have “been selective in including only information that benefits their case”: record, page 233.
37. This appeal is dismissed.

## **ORDER**

38. Pursuant to section 115(1)(a) of the *ESA*, I order the Determination dated November 9, 2023, be confirmed in the amount of \$16,419.70, together with any interest that has accrued under section 88 of the *ESA*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**