Citation: Western Group Distribution
and Warehouse Centre Ltd. (Re)
2024 BCEST 60

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Western Group Distribution and Warehouse Centre Ltd.
("Appellant")

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Brandon Mewhort

**FILE NO.:** 2024/031

**DATE OF DECISION:** July 15, 2024

# DECISION

## SUBMISSION

| | |
|---|---|
| Reetesh Chand | on behalf of Western Group Distribution and Warehouse Centre Ltd. |

## OVERVIEW

1. This is an appeal by Western Group Distribution and Warehouse Centre Ltd. ("Appellant") of a determination issued by a delegate of the Director of Employment Standards ("Delegate"), dated February 29, 2024 ("Determination"). The appeal is filed pursuant to section 112(1) of the *Employment Standards Act* ("*ESA*").

2. In the Determination, the Delegate found that the Appellant owed two former employees (collectively, "Employees") outstanding wages and vacation pay, and it owed one of the Employees compensation for length of service. The Delegate also imposed administrative penalties in the amount of $2,500.00 for breaches of the *ESA*.

3. Section 114(1) of the *ESA* provides that any time after an appeal is filed, and without a hearing of any kind, the Tribunal may dismiss all or part of the appeal if the Tribunal determines that, among other things, there is no reasonable prospect the appeal will succeed.

4. For the reasons discussed below, I dismiss this appeal pursuant to section 114(1) of the *ESA*, because there is no reasonable prospect it will succeed.

## ISSUE

5. The issue is whether this appeal should be dismissed pursuant to section 114(1) of the *ESA*.

## THE DETERMINATION

6. The Appellant, along with other companies that the Delegate found to be the same employer under section 95 of the *ESA*, operates a "transportation group" that provides a variety of trucking and transportation services, including courier, container drayage and retail delivery, and long haul and short haul trucking services. The Employees were short haul truck drivers for the Appellant, and there was no dispute that they met the definition of "short haul truck driver" under section 1 of the *Employment Standards Regulation*.

7. The Appellant did not provide a response during the investigation to the evidence submitted by the Employees, so the Delegate found the pay schedules, wage statements and records of hours that the Employees provided to be the best available evidence for the purpose of calculating their wage entitlements under the *ESA*. The Delegate determined that the Employees were both owed overtime wages and vacation pay, and that one of the Employees was owed compensation for length of service. Notably, despite being given an opportunity to do so during the investigation, the Appellant did not

respond to a preliminary calculation of the Employees' entitlements under the *ESA*, nor did it respond meaningfully to an investigation report that was issued on December 20, 2023 ("Investigation Report").

8. The Delegate also imposed five administrative penalties in the total amount of $2,500.00 for breaches of the *ESA*.

## ARGUMENT

9. When asked in the appeal form to select its grounds of appeal, the Appellant indicated that the Director erred in law. The entirety of the Appellant's submission that accompanied its appeal form is as follows:

> This is to appeal to [*sic*] the decision of the Director of Employment Standards.
>
> The calculations made on the determination didn't account for lunch time, which is not payable.
>
> Drivers take 30 minutes lunch break every day and this is not payable by WGD or any company in [*sic*] lower mainland.
>
> This is to request to have this taken into account, and new calculations resubmitted for our review and approval.

## ANALYSIS

10. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with a determination: see *Tejinder Dhaliwal (Re)*, 2021 BCEST 34 at para 13.

11. The Appellant is essentially asking this Tribunal to overturn a finding of fact regarding the hours worked by the Employees. However, this Tribunal does not have the jurisdiction under section 112 of the *ESA* to correct errors of fact, unless an error of fact amounts to an error of law. For an error of fact to amount to an error of law, this Tribunal would need to find that the finding of fact was irrational, perverse or inexplicable: see e.g., *Anthony (Re)*, BC EST # RD123/17 at paras 42 to 43.

12. In this case, as discussed above, the Delegate found the pay schedules, wage statements and records of hours that the Employees provided to be the best available evidence for the purpose of calculating their wage entitlements under the *ESA*, because that was the only evidence provided by the parties in that regard. The Appellant did not provide any such evidence, even though it was issued a demand for records on September 26, 2023. Moreover, as also discussed above, the Appellant did not respond to a preliminary calculation of the Employees' entitlements under the *ESA* during the investigation, nor did it respond meaningfully to the Investigation Report.

13. In my view, there is nothing on the record to suggest that the Delegate made an error when determining the hours worked by the Employees given the uncontroverted evidence that was before him. The Appellant had numerous opportunities to provide contrary evidence – including about whether the hours submitted by the Employees included time for lunch that should not have been paid – but the Appellant failed to do so.

14. Accordingly, I find that the Appellant has failed to demonstrate a basis for the Tribunal to interfere with the Determination, and I dismiss the appeal under section 114(1)(f) of the *ESA* as there is no reasonable prospect it will succeed.

**ORDER**

15. I order that the Determination be confirmed pursuant to section 115(1)(a) of the *ESA*.

**Brandon Mewhort**
**Member**
**Employment Standards Tribunal**