

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Mile One Ventures Ltd.

- of a Determination issued by -

The Director of Employment Standards

PANEL: Richard Grounds

FILE NO.: 2024/038

DATE OF DECISION: July 15, 2024

DECISION

SUBMISSIONS

Randy Jones

on behalf of Mile One Ventures Ltd.

OVERVIEW

1. This is an appeal by Mile One Ventures Ltd. (“Appellant”) of a determination issued by Jake Kislock, a delegate (“Delegate”) of the Director of Employment Standards (“Director”), dated February 14, 2024 (“Determination”). The Appellant appeals the Determination pursuant to section 112(1) of the *Employment Standards Act* (“ESA”).
2. In the Determination, the Delegate concluded that Zachary Morneault (“Complainant”) was owed wages by Mile One Ventures Ltd. The Delegate concluded that the Complainant was owed wages in the total amount of \$3,080.92 including interest in the amount of \$305.80. The Delegate imposed administrative penalties in the total amount of \$1,000.00 against Mile One Ventures Ltd.
3. The Appellant appeals the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination.
4. Submissions were not requested from the parties.
5. I have considered the Determination, the reasons for the Determination, the appeal submissions and the *ESA* section 115 record (“Director’s Record”). For the following reasons, the Appellant’s appeal is dismissed, and the Determination is confirmed.

ISSUE

6. The issue to be decided in this appeal is whether the Director failed to observe the principles of natural justice in making the Determination.

FACTUAL BACKGROUND

7. The Appellant operates a restaurant and market in Pemberton, BC. Randy Jones is the sole director of the Appellant. The Complainant worked as a head chef for the Appellant from May 13, 2020, to January 24, 2022. The Complainant’s employment was terminated after he failed to pay for groceries he had taken from the Appellant using an “IOU” note.
8. The Complainant submitted a complaint to the Employment Standards Branch on February 15, 2022, requesting compensation for length of service. The Complainant’s complaint proceeded to an investigation which was conducted by Lee Ann Thomspson, a delegate of the Director of Employment Standards (“Investigating Delegate”).

9. The Investigating Delegate identified the following questions to be answered:
- 1) Has the Respondent established just cause to terminate the Complainant's employment without notice or compensation for length of service?
 - 2) Is the Complainant owed compensation for length of service?
 - a. If the Complainant is owed compensation for length of service, how much is owed?
 - 3) Did the Respondent have a valid written assignment of wages for deductions from the Complainant's wages?
 - a. If the Respondent improperly collected assigned wages, what amount of wages is the Complainant entitled to recover?
 - b. Were wage statements issued to the Complainant in compliance with the *Employment Standards Act*?
10. The Investigating Delegate spoke with the Complainant and with the Appellant's director, Randy Jones, and also exchanged numerous emails with each of them. The Investigation Report summarized their evidence including the following: facts that the parties agreed upon; verbal warnings that had been provided to the Complainant; a written warning given to the Complainant on his termination; the Appellant's IOU system for employees to take groceries from the Appellant's store; the Complainant's wage statements for the period January 24, 2021, to January 24, 2022; and relating to the Complainant's termination. The Investigation Report included a list of documents gathered for the investigation.
11. The Investigation Report was sent to the parties by email on October 18, 2023. On November 1, 2023, Randy Jones provided a response with "comments" and "rebuttal." The Complainant did not provide a response to the Investigation Report.

THE DETERMINATION

12. The Delegate completed the Determination based on "a review of all information on the file, which includes the investigation report issued on October 18, 2023, summarizing the information collected from the investigation." The Delegate noted that the Appellant had provided a response to the Investigation Report where "they reasserted their previous submissions and noted that the Complainant's evidence is simply his perspective on the issues."
13. The Delegate identified the following three issues:
1. Has the Respondent established just cause to terminate the Complainant's employment without notice or compensation for length of service?
 2. Is the Complainant owed compensation for length of service?
 - a. If the Complainant is owed compensation for length of service, how much is owed?
 3. Did the Respondent have a valid written assignment of wages for deductions from the Complainant's wages?

- a. If the Respondent improperly collected assigned wages, what amount of wages is the Complainant entitled to recover?
- b. Were wage statements issued to the Complainant in compliance with the Act?

14. The Determination summarized the evidence provided by the Complainant and the evidence provided by Randy Jones on behalf of the of Appellant, including relating to the IOU system, the circumstances related to the Complainant taking groceries in January 2022, and the Complainant's termination on January 24, 2022.
15. The Determination articulated the reasons for the Delegate's conclusions, including that the Appellant did not have just cause to terminate the Complainant's employment without notice or compensation for length of service and that the Complainant was owed compensation for length of service in the total amount of \$3,080.92 including interest in the amount of \$305.80. In reaching this conclusion, the Delegate decided that there was no valid written assignment of wages for deduction from the Complainant's wages, so the amounts deducted for IOUs were deducted in contravention of the *ESA*.
16. The Delegate referenced various sections of the *ESA* that applied to his analysis including those related to compensation for length of service (section 63), vacation pay (section 58), written assignment of wages (section 22), the payment of wages (section 21) and those related to contraventions of the *ESA*.
17. The Delegate imposed administrative penalties in the total amount of \$1,000.00 against the Appellant for failing to pay the Complainant compensation for length of service within the required time (as required under section 63 of the *ESA*), and by deducting wages without a valid assignment of wages (as prohibited by section 21 of the *ESA*).
18. The Determination was sent to the Appellant on February 14, 2024, by email and also by registered mail. The Determination included appeal information advising that the deadline to appeal the Determination was 4:30 pm on March 25, 2024. The appeal was submitted within the deadline on March 25, 2024.

ARGUMENTS

19. The Appellant submits that the principles of natural justice were breached in the Determination because the Complainant had a "history of questionable leadership and integrity shown in the verbal and written warnings" which supported his termination. The Appellant submits that it was not presented with evidence from the Complainant that he always processed his purchases through his supervisor.
20. The Appellant disagrees with the Delegate's suggestion that the Appellant did not seem to be overly concerned with the groceries taken by the Complainant and that they were, and that the Complainant had been deceitful by not paying for the groceries. The Appellant submits that it did not deduct the amount of the groceries from the Complainant's pay because there were certain items that were based on weight so they could not know the amount.
21. The Appellant submits that while the company policy relating to IOUs for employee purchases was not written, it was "well established, and had been adhered to correctly by all the staff" over many years. The

Appellant submits that the Complainant should have known what to do to pay for the groceries without the IOU policy being written.

22. Submissions were not requested from the parties or the Director.

ANALYSIS

23. 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.

24. The Appellant appeals the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination. The principles of natural justice relate to the fairness of the process and ensure that the parties know the case against them, are given the opportunity to respond to the case against them, and have the right to have their case heard by an impartial decision maker. The principles of natural justice include protection from proceedings or decision makers that are biased or where there is a reasonable apprehension of bias.

25. The obvious fairness issue raised by the Appellant is that it was not presented with evidence from the Complainant that he always processed his purchases through his supervisor. This submission refers to the following line in the Determination: “The Complainant has provided evidence that he always processed his purchases with ... his direct supervisor”.¹ If accurate, the Appellant’s submission could support that the Appellant did not know the specific case against them and were not given the opportunity to respond to the case against them.

26. When viewed in context, it is apparent that this reference in the Delegate’s analysis was simply a reference to the evidence of the Complainant himself that he always dealt with his direct supervisor/manager related to his purchases. This was relevant because the Complainant was terminated before he was able to speak with his direct supervisor/manager because she was not at work on the days before he was terminated. This information from the Complainant was included in the Investigation Report so the Appellant was provided with notice of it and was given the opportunity to respond to it.

27. The other grounds of appeal raised by the Appellant essentially amount to disagreement with the Delegate’s assessment of the evidence and do not raise issues related to the principles of natural justice. The Appellant was provided with notice of the case against them and were afforded an opportunity to respond to the case against them. There is no evidence to support to that the Delegate was not an impartial decision maker or was biased in any way against the Appellant.

28. The role of the Tribunal is to decide whether the appeal should be allowed or dismissed based on the ground of appeal. It is not to re-weigh the evidence and decide the merits of the original complaint afresh.

¹ Determination, pg R10.

The Appellant has not raised any grounds of appeal to support that the Director of Employment Standards failed to observe the principles of natural justice in making the Determination.

ORDER

29. The Appellant's appeal is dismissed, and the Determination is confirmed under section 115(1)(a) of the *ESA*.

Richard Grounds
Member
Employment Standards Tribunal