

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Richvan Pavers Ltd.

- of a Determination issued by -

The Director of Employment Standards

PANEL: Richard Grounds  
SUBMISSIONS: Karamjit Cheema, on behalf of Richvan Pavers Ltd.  
FILE NUMBER: 2024/028  
DATE OF DECISION: August 13, 2024

## DECISION

### OVERVIEW

1. This is an appeal by Richvan Pavers Ltd. (“Appellant”) of a determination issued by Tara MacCarron, a delegate (“Delegate”) of the Director of Employment Standards (“Director”), dated January 24, 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 the Complainant, Vikrant Chaudhary Billa, was owed wages by Richvan Pavers Ltd. The Delegate concluded that the Complainant was owed wages in the total amount of \$16,453.31 including interest in the amount of \$1,883.98. The Delegate imposed administrative penalties in the total amount of \$2,500.00 against Richvan Pavers Ltd.
3. The Appellant appealed 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 landscaping, flooring and renovation services business in Surrey, BC. The Complainant was employed by the Appellant from late 2020 to mid-to-late 2021 when his employment ended.
8. The Complainant submitted a complaint to the Employment Standards Branch on September 24, 2021, requesting wages for work that he performed but was not paid. The Complainant’s complaint proceeded to an investigation which was conducted by Benjamin Dixon, a delegate of the Director of Employment Standards (“Investigating Delegate”).<sup>1</sup>
9. The Investigating Delegate identified the following questions to be answered:
  1. What was the Complainant’s last day of work?
  2. Is the Complainant entitled to outstanding regular wages?

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<sup>1</sup> The Investigating Delegate referred to the Appellant as the “Respondent” in the Investigation Report.

3. Is the Complainant entitled to outstanding overtime wages?
  4. Is the Complainant entitled to outstanding statutory holiday pay?
  5. Did the Complainant receive wages as and when required by the Act?
10. The Investigating Delegate spoke with the Complainant and with the Appellant's director, Karamjit Cheema, and also exchanged emails with each of them. The Investigating Delegate requested payroll records from the Appellant. The Investigation Report included a list of documents gathered for the investigation including: the Complaint form, a medical report, handwritten daily record of hours, cheques and wage statements from the Complainant; and a daily record of hours provided by the Appellant. The Investigation Report summarized the facts that were agreed upon including the Complainant's rate of pay, that the Complainant was paid some vacation pay, and that the parties did not agree on the Complainant's first and final day of work.
11. The Investigation Report summarized the evidence from the Complainant including that he worked for the Appellant from August 27, 2020, to September 13, 2021, when he was injured in an accident, his hours worked for the Appellant, and that the Appellant had withheld his wages between June 23, 2021, and September 13, 2021, to pay for an immigration consultant's fees and costs associated with a Labour Market Impact Assessment (LMIA).
12. The Investigation Report summarized the evidence from the Appellant including initially that the Complainant worked from September 1, 2020, to June 29, 2021, when the Complainant quit, then that the Complainant quit "a month or so after June 2021" due to an injury sustained while working for a different employer, the hours worked by the Complainant, initially that the Appellant withheld some of the Complainant's wages to recoup costs for an immigration consultant when the Complainant did not pay the Appellant, and then that the Appellant did not withhold wages from the Complainant but that the Complainant had made a verbal request for them to assign his wages towards the fees.
13. The Investigation Report was sent to the Appellant by mail and to the Complainant by email on July 19, 2023. On August 1, 2023, the Appellant provided a response stating that they never asked the Complainant for any LMIA and questioned why the Complainant did not call the police if they threatened him, and also asked the Investigating Delegate to ask the Complainant where he worked before he worked for the Appellant (and that the Complainant worked for cash installing gutters). The Complainant did not provide a response to the Investigation Report.

## **THE DETERMINATION**

14. The Delegate, Tara MacCarron, completed the Determination based on "a review of all information on the file, which includes the investigation report (the IR) issued on July 19, 2023, and the post IR, summarizing the information collected from the investigation." The Delegate noted that the parties had been "specifically requested" to review the documents from the Investigation Report and to "indicate if it contained any errors or required clarification." The Delegate noted that the Appellant had responded to the Investigation Report and had considered the response in her decision.

15. The Delegate identified the following four issues:
1. What was the Complainant's last day of work?
  2. Is the Complainant owed outstanding regular wages?
  3. Is the Complainant owed outstanding overtime wages?
  4. Is the Complainant entitled owed outstanding statutory holiday pay?
16. The Determination articulated the Delegate's reasons relating to the Complainant's last day of work including: both parties agreed that the Complainant's employment ended after he had been injured in an accident and that the medical record (dated September 20, 2021, and which stated that the accident occurred on September 13, 2021) was the best available evidence as to when the accident occurred; the Complainant's record of hours was more reliable than the Appellants record of hours, in part because the Appellant's version changed during the investigation; and the Complainant asked for a Record of Employment in September 2021, and not earlier. The Delegate concluded that the Complainant's last day of work was September 13, 2021, and that the recovery period was September 13, 2020, to September 13, 2021.
17. The Determination articulated the Delegate's reasons relating to whether the Complainant was owed outstanding regular wages including: the Complainant was generally paid for 80 hours or less of work per pay period; both parties agreed that the Complainant was not paid any wages for work after June 22, 2021; the Appellant's position was that it withheld wages to repay fees for an immigration consultant but it did not have a written assignment as required under section 22 of the *ESA*; and the Complainant's record of hours was more reliable than the Appellant's. The Delegate concluded that the Complainant was owed \$7,869.06 in regular wages and \$314.76 in vacation pay based on the difference between what he was paid and what he had earned according to his record of hours worked.
18. The Determination articulated the Delegate's reasons relating to whether the Complainant was owed outstanding overtime wages including: although the Complainant's wage statements did not show he worked any overtime, the Appellant's record of hours showed that the Complainant occasionally worked overtime based on variable hours worked each week; and based on the Complainant's record of hours, he earned daily and weekly overtime but was never paid overtime wages. The Delegate concluded that the Complainant was owed \$2,160.00 in daily overtime, \$5,267.16 in weekly overtime, and additional vacation pay of \$297.09.
19. The Determination articulated the Delegate's reasons relating to whether the Complainant was owed outstanding statutory holiday pay including: according to the Complainant's records, he had qualified for statutory holiday pay under section 44 of the *ESA* for each statutory holiday pay throughout his employment; and the Complainant's wage statements confirmed that he was not consistently paid the correct statutory holiday pay, as required by sections 45 and 46 of the *ESA*. The Delegate concluded that the Complainant was owed an additional \$524.27 in statutory holiday pay and \$20.97 in vacation pay, based on the difference between what he earned and was paid.

20. The Delegate imposed administrative penalties in the total amount of \$2,500.00 against the Appellant for the following: failing to pay the Complainant at least twice per month, as required by section 17 of the *ESA*; failing to pay the Complainant all outstanding wages within six days after his employment ended, as required by section 18 of the *ESA*; failing to pay overtime wages on an ongoing basis, as required by section 40 of the *ESA*; and failing to pay statutory holiday pay on two occasions, as required by sections 45 and 46 of the *ESA*. The Delegate concluded that the Complainant was entitled to interest in the amount of \$1,883.98.
21. The Determination was sent to the Appellant by regular mail and to its director, Karamjit Cheema, by regular mail and email on January 24, 2024. The Determination included appeal information advising that the deadline to appeal the Determination was 4:30 pm on March 4, 2024. The appeal was submitted within the deadline on March 4, 2024.

## **ARGUMENTS**

22. The Appellant appeals the Determination on the basis that the Director failed to observe the principles of natural justice in making the Determination. The Appellant submits that the decision was “not justified” and that it was “pressurized to make the payment.” The Appellant submits that it did not agree with the decision and that their “side [was] not listened to properly.”
23. The Appellant included the Investigation Report and attached documents for its appeal. The parties were both asked to make submissions on the completeness of the Record. The Complainant confirmed that the Record included “everything” provided by them for the investigation, but the Appellant did not make any submissions on the completeness of the record.
24. Submissions were not requested from the parties or the Director.

## **ANALYSIS**

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. 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.

27. The Appellant disagrees with the Determination and submits that it was not “listened to properly” but does not provide any submissions as to how it was not listened to by the Delegate. Although an appellant is not required to express their submissions in a lawyerly like manner, it is helpful if an appellant can provide some explanation for the basis of its submission. Absent some explanation for a submission, the Panel can only proceed to consider whether there is some obvious error on the face of the appeal.
28. The Investigating Delegate spoke with the Appellant’s director, requested information from the Appellant, and provided the Appellant with the Investigation Report which clearly identified the primary issues in dispute related to the Complainant’s record of hours worked and the Complainant’s last day worked. The Investigation Report summarized the evidence gathered for the investigation, including inconsistencies in the information provided by the Appellant. The Appellant responded to the Investigation Report, but the only substantive comment the Appellant made was that it had not asked the Complainant to pay money for an LMIA.
29. There is no obvious fairness issue to support that the Appellant did not know the case against it or that the Appellant was not given the opportunity to respond to the case against it. The fact that the Appellant disagrees with the Determination and feels pressured to pay the amount owing is understandable but it does not raise any issues related to the principles of natural justice. There is no evidence to support that the Delegate was not an impartial decision maker or was biased in any way against the Appellant.
30. 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. The Appellant has not raised any grounds of appeal to support that the Director failed to observe the principles of natural justice in making the Determination.

## **ORDER**

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

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**Richard Grounds**  
**Member**  
**Employment Standards Tribunal**