Citation: Creative Advantage Childcare Inc. (Re)
2024 BCEST 93

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Creative Advantage Childcare Inc.
("Appellant")

- of a Determination issued by -

The Director of Employment Standards

PANEL:	Sherry Shir
SUBMISSIONS:	Jennifer Edge, on behalf of Creative Advantage Childcare Inc.
FILE NUMBER:	2024/062
DATE OF DECISION:	October 17, 2024

DECISION

OVERVIEW

1. This is an appeal filed by Creative Advantage Childcare Inc. ("Appellant") of a determination that was issued by a delegate ("deciding Delegate") of the Director of Employment Standards ("Director") on April 30, 2024 ("Determination").

2. The Determination held the Appellant had breached sections 58 and 68 of the *ESA* by terminating its employee, Janine Fojt, and failing to pay her vacation pay and compensation for length of service.

3. The Determination ordered the Appellant to pay Ms. Fojt wages in the total amount of $8,255.27, plus interest under section 88 of the *ESA* in the amount of $1,010.05, and to pay administrative penalties in the amount of $1,000.00. The total amount ordered by the Determination is $10,265.32.

4. The Appellant appeals the Determination on the basis that:

    a. the deciding Delegate committed errors of law (see section 112(1)(a) of the *ESA*); and

    b. new evidence has become available that was not available at the time the Determination was made (see section 112(1)(c) of the *ESA*).

5. I have decided this appeal is appropriate for consideration under section 114 of the *ESA*. Under subsection 114(1), I have the discretion to dismiss all or part of this appeal without a hearing or submissions from the other parties to the appeal for the specific reasons listed in the subsection. I have assessed the appeal based solely on the Reasons for the Determination, the Appeal Form, the written submission filed by the Appellant with the Appeal Form, any additional evidence I decide to accept and consider, and my review of the material that was before the Director when the Determination was being made.

6. For the reasons that follow, I have decided to dismiss this appeal under section 114(1)(f) – the Appellant has not established a reasonable prospect that this appeal will succeed. Given this conclusion, I have decided it is unnecessary to hold a hearing on this matter or to seek submissions from the other parties to the appeal.

ISSUE

7. The issue here is whether I should allow this appeal to proceed or dismiss it under section 114(1) of the *ESA*.

8. Specifically, I must determine whether the Appellant has established a reasonable prospect this appeal will succeed on the basis that:

    a. the deciding Delegate has erred in law; or

    b. new evidence has become available.

BACKGROUND FACTS

9. The Appellant is a limited partnership that operates a licensed childcare facility in Kelowna, BC ("Facility").

10. Ms. Fojt began her employment with the Appellant as a licensed early childhood educator ("ECE") on January 15, 2015, and later took on the role of ECE and Manager with the Appellant.

11. The Appellant terminated Ms. Fojt's employment without notice or compensation for length of service on February 7, 2022.

12. Ms. Fojt filed a complaint with the Employment Standards Branch on February 17, 2022, alleging that the Appellant had contravened the *ESA* by failing to pay all vacation pay owing and compensation for the length of service.

13. The Appellant argued that Ms. Fojt had been paid all vacation pay owed to her and was terminated for just cause. With respect to the latter point, the Appellant argued that it had just cause to terminate Ms Fojt because she lacked the temperament to work with children, and her actions and inactions compromised child safety. In addition, the Appellant claimed that Ms. Fojt was a "facility manager" and, therefore, she met the definition of "manager" under the *Community Care and Assisted Living Act* (*CCALA*), a statutory regime that governs the Facility. On this basis, the Appellant argued that Ms. Fojt was responsible for managing the entirety of the Appellant's programs at its "Upstairs" location.

14. The investigating Delegate investigated the complaint and issued an Investigation Report (IR) dated June 9, 2023. A copy of the IR was delivered to each of the parties, who were provided the opportunity to respond to it. Each party provided a response.

THE DETERMINATION

15. In the Determination, the deciding Delegate identified the following issues:

    a) Was Ms. Fojt owed compensation for length of service, and if so, how much? This issue turned on whether the Appellant had just cause to terminate Ms. Fojt.

    b) Did the Appellant terminate Ms. Fojt's employment because she took a type of leave set out in Part 6 of the *ESA*, and if so, what was the appropriate remedy?

    c) Was Ms. Fojt owed vacation pay, and if so, how much?

16. The deciding Delegate summarized the information provided by each party during the investigation, as set out in the IR. A summary of the positions of the Appellant and Ms. Fojt is set out on pages R5 to R12 of the Reasons for the Determination.

17. On the first issue, the deciding Delegate set out the applicable principles, analyzed the position of the parties in the context of those principles and the evidence provided, and reached a conclusion based on that analysis, finding the Appellant had not established there was just cause for terminating Ms. Fojt.

18. More specifically, the deciding Delegate found there was no evidence on the record capable of supporting the Appellant's assertion that Ms. Fojt was a "manager" within the meaning of *CCALA* and, therefore, was not responsible for managing the "Upstairs" location in its entirety. However, the Delegate went on to find that Ms. Fojt had managerial responsibilities in the sense that she was responsible for ensuring the safety of the area she worked in and the areas attached to it. Notwithstanding this finding, the deciding Delegate concluded that the Appellant had not established Ms. Fojt:

    a. lacked the temperament to work with children in a manner that irrevocably destroyed the root of the employment agreement; or

    b. her actions and inactions compromised child safety.

19. Consequently, the deciding Delegate found Ms. Fojt was entitled to compensation for length of service in the amount set out in the Determination.

20. In calculating the amount of compensation the Appellant owed to Ms. Fojt, the deciding Delegate concluded that, during the relevant time, Ms. Fojt had received $23.00 per hour plus what was referred to in the IR as a "$4.00 per hour government wage enhancement" ("Wage Enhancement"). The deciding Delegate held that the Wage Enhancement did not form part of Ms. Fojt's "wages" as the term is defined in the *ESA* because it was not payable by the Appellant; rather, it was payable by the government via the Appellant.

21. On the second issue, the deciding Delegate found that the Appellant did not terminate Ms. Fojt because she took a type of leave set out in Part 6 of the *ESA* and dismissed that portion of the complaint against the Appellant.

22. On the third issue, the deciding Delegate found that the Appellant paid Ms. Fojt 4% vacation pay throughout her employment and paid vacation pay on each paycheque. On this basis, the deciding Delegate found that Ms. Fojt was entitled to an additional 2% of vacation pay in her fifth, sixth, seventh, and eighth years of employment, pursuant to section 58 of the *ESA*. In making this finding, the deciding Delegate referred to a line item in Ms. Fojt's wage statements that stated "CCOF Payment for ECE." The deciding Delegate noted that she had no information before her to determine the nature of this payment except that it was included in the wage statements. On that basis, she found that the "CCOF Payment" was wages within the meaning of the *ESA*.

23. Parenthetically, I note that in this appeal, the Appellant's submissions clarify that the "CCOF payment" included in Ms. Fojt's wage statement refers to the Wage Enhancement. However, this information was not before the deciding Delegate at the time she issued the Determination.

24. Based on the foregoing, the deciding Delegate also found the Appellant had contravened sections 58 and 63 of the *ESA* and imposed administrative penalties for those contraventions.

ARGUMENT

25. The Appellant has raised two grounds of appeal:

a) error of law; and

b) evidence becoming available that was not available at the time the Determination was being made.

Error of Law

26. In its submissions, the Appellant argues that the deciding Delegate erred in law.

27. The Appellant's first argument under this ground is that it was an error of law for the deciding Delegate to conclude that the amounts included in Ms. Fojt's wage statement under "CCOF payment for ECE" were wages. The Appellant argues that it had not made any commitment to pay this amount to Ms. Fojt; rather, the payment was a wage subsidy paid by the government.

28. The Appellant states that it had explained to the investigating Delegate the nature of these payments. In addition, the Appellant relies on documents that were not before the deciding Delegate to support its position regarding the "CCOF payment."

29. The Appellant further asserts that the investigating Delegate or the deciding Delegate (it is unclear to whom the Appellant is referring) could have conducted a search on the internet to determine the nature of these payments or sought further clarification from the Appellant's accountant whose contact information had been provided to the investigating Delegate.

30. The Appellant's second argument under this ground of appeal is that the deciding Delegate made an error of law by "acting without any evidence" and "adopting a method of assessment that is fundamentally wrong" but does not specify to which aspect of the Determination these assertions apply.

31. Later in its submissions, the Appellant states that the deciding Delegate erred in law by "confusing the term facility manager and manager as it applies to [the company] and specific job descriptions."

32. The Appellant also raises several other concerns about the deciding Delegate's findings of facts pursuant to which the Determination was made.

New Evidence

33. The Appellant has attached several documents to its appeal that it states were not provided during the complaint process. They are as follows:

a) a document titled "Schedule B1 – ECE Employee Form of Acknowledgement", identified as Exhibit "A" in the Appellant's submissions;

b) a signed statement from the Appellant's managers, dated June 7, 2024, identified as Exhibit "B" in the Appellant's submissions;

c) excerpts from the Appellant's Employee Handbook, identified as Exhibit "C" in the Appellant's submissions;

d) a document which the Appellant alleges proves Ms. Fojt lied about being off work on February 3 and 4, 2022, identified as Exhibit "D" in the Appellant's submissions;

e) the Appellant's Community Care Facility License issued by Interior Health, identified as Exhibit "E" in the Appellant's submissions; and

f) a document that seems to be Ms. Fojt's timecard for her last week of employment, identified as Exhibit "F" in the Appellant's submissions.

34. I note that the excerpts from the Appellant's Employee Handbook were quoted in the Appellant's response to the IR. As such, they are not considered to be "new evidence," given that they were before the deciding Delegate at the time of the Determination. Otherwise, the remainder of the material was not submitted to the investigating Delegate, given that they are not contained in the section 112(5) record.

35. The Appellant's submissions and the contents of the documents indicate that all the documents were "available" and could have been submitted to the investigating Delegate.

36. The Appellant states that it did not submit all of this evidence previously because it was unaware that it would have to prove "all of [its] written statements." The Appellant further states that it was not until it received the Determination that it realized it ought to have submitted additional documents in support of its position.

ANALYSIS

37. Subsection 112(1) of the *ESA* sets out the statutorily limited grounds of appeal, which reads as follows:

> 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.

Error of Law

38. The British Columbia Court of Appeal's decision in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 is the seminal decision setting out what constitutes an error of law. To establish an error of law, the Appellant must demonstrate that the deciding Delegate has engaged in one of the following:

1. a misinterpretation or misapplication of a section of the *ESA*;
2. a miscalculation of an applicable principle of general law;

3. acting without any evidence;
4. acting on a view of the facts which could not reasonably be entertained; and
5. exercising discretion in a fashion that is wrong in principle.

39. The grounds for appeal outlined in subsection 112(1) of the *ESA* do not generally allow for appeals based on factual errors. The Tribunal does not have the authority to consider appeals that aim to challenge the factual conclusions reached by the deciding Delegate unless those findings involve an error of law: *Britco Structures Ltd.*, BC EST # D260/03; *Re Pro-Serv Investigations Ltd.*, BC EST # D059/05; and *Re Koivisto (o/a. Finn Custom Aluminum)*, BC EST # D006/05.

40. It is very rare for the Tribunal to find that a finding of fact amounts to an error of law. To amount to an error of law, the Appellant has to establish objectively that the deciding Delegate has:

a) committed a "palpable and overriding error on the facts":

b) "acted without any evidence or on a view of evidence that could not reasonably be entertained"; or

c) arrived at a "clearly wrong conclusion of fact."

(see *3 Sees Holdings Ltd. (Jonathan's Restaurant) (Re)*, BC EST # D041/13 at paras 26 to 29; *Sutherland Hills Rest Home Ltd. (Re)*, BC EST # D088/11 at para 54)

41. The Appellant has alleged that the deciding Delegate erred in law by concluding that the "CCOF payment" constituted wages. In support of this argument, the Appellant relies on the fact that, in its submissions, it had explained Ms. Fojt was receiving an additional $4.00 per hour in wages through the Provincial Government's ECE Wage Enhancement program.

42. While the Appellant identifies this issue as an error of law, it is actually objecting to the deciding Delegate's findings of facts as they relate to the purpose or nature of the "CCOF payment." More specifically, the Delegate found that the "CCOF payment" constituted wages under the *ESA* based on the Delegate's evidentiary conclusion that there was "no information to determine the nature of this payment except that it [was] included in the wage statements."

43. Therefore, to amount to an error of law, the Appellant must establish that, in reaching this conclusion, the deciding Delegate has made a palpable and overriding error on the facts, reached a clearly wrong conclusion of fact, acted without any evidence or on a view of the evidence could not reasonably be entertained.

44. The record indicates that the Appellant provided an explanation regarding the ECE Wage Enhancement program during the complaint process. In this appeal, the Appellant argues that "[it] did not realize that [its] written statement explaining the wage enhancement offered by the government would have been assumed false." I find this was not the case.

45. The Determination indicates that the deciding Delegate considered the information the Appellant provided with respect to the Wage Enhancement. On page R21 of the Determination, the Delegate relied on the Appellant's statement to find that the "$4.00 per hour government wage enhancement"

was not "wages" as the term is defined in the *ESA*. Therefore, where the deciding Delegate was aware of the nature of the Wage Enhancement payment, she did take it into consideration.

46. However, on the issue of vacation pay, the record indicates that the Appellant did not clarify in its statement that the Wage Enhancement was identified as "CCOF payment" on Ms. Fojt's wage statement. In fact, neither party provided this clarification to the Delegate.

47. The first time this clarification was made, was in this appeal where the Appellant relies on the document titled "Schedule B1 – ECE Employee Form of Acknowledgement" ("ECE Acknowledgement Form") to support its position.

48. For reasons set out later in this decision, I find that the ECE Acknowledgement Form is not admissible as "new evidence." Therefore, I have not considered it as part of this appeal.

49. I also find that, in light of the totality of the evidence that was before the deciding Delegate, it was reasonable for her to conclude that the "CCOF payment" constituted wages for the purposes of determining Ms. Fojt's entitlement to vacation pay. The evidence before the deciding Delegate indicated that the Appellant regularly paid Ms. Fojt a sum identified as "CCOF payment" on her wage statement. Based on the evidence before her, the deciding Delegate concluded that the "CCOF payment" constituted wages, presumably because it was money that the Appellant paid to Ms. Fojt regularly in relation to her hours of work. More importantly, as I noted above, during the submission process, neither party clarified that the "ECE Wage Enhancement" was identified as "CCOF payment" on Ms. Fojt's wage statement.

50. Furthermore, it would not have been obvious to the deciding Delegate that the "CCOF payment" was referring to the Wage Enhancement. The "CCOF payment" appears as a lump sum payment on Ms. Fojt's wage statements, and when the amount of that payment is divided by the hours Ms. Fojt worked during the specified pay period, it does not amount to "$4.00 per hour" that the Appellant claimed was being paid as the Wage Enhancement.

51. I, therefore, cannot find the deciding Delegate made a palpable or overriding error of fact or acted on a version of the evidence that could not be reasonably entertained.

52. The Appellant also claims that the deciding Delegate erred in law by "confusing the term facility manager and manager" as it applied to the Appellant's operations and Ms. Fojt's employment.

53. Again, while the Appellant has identified this as an error of law, it is actually an assertion that the deciding Delegate made an error of fact because it calls into question the Delegate's evidentiary findings about Ms. Fojt's role within the Appellant's organization. Therefore, to amount to an error of law, the Appellant must establish that, in reaching this conclusion, the deciding Delegate made a palpable and overriding error on the facts, reached a clearly wrong conclusion of fact, or acted without any evidence or on a view of the evidence could not reasonably be entertained.

54. For the reasons outlined below, I cannot find that the Delegate made a palpable or overriding error of fact or acted on a version of the evidence that could not be reasonably entertained.

55. During the complaint process, the Appellant asserted that Ms. Fojt was promoted to the position of "facility manager" and in that position there was a significant increase in her responsibility in regard to safety measures. On this basis, the deciding Delegate reasonably concluded that the Appellant was arguing that Ms. Fojt's role included that of "facility manager."

56. Ms. Fojt, in response to the Appellant's assertion that she was a "facility manager," provided evidence that demonstrated Jennifer Edge, the Appellant's owner, had been listed as the "facility manager" for the "Upstairs" location.

57. Based on the evidence before her, the deciding Delegate concluded that Ms. Fojt was not a "manager" within the meaning of the *CCALA*, which applied to the Appellant's operation. Rather, Ms. Edge occupied that role in her capacity as the "facility manager."

58. Notwithstanding the above, the deciding Delegate held that Ms. Fojt was a "manager" in the sense that she was responsible for ensuring the safety of the area she worked in and the areas attached to it.

59. Considering the totality of the deciding Delegate's findings, I find that there was no confusion about the role of "manager" and "facility manager" within the Appellant's operation. The deciding Delegate appropriately concluded that the position of "facility manager" was occupied by Ms. Edge (a fact which the Appellant did not dispute at the complaint stage) and that Ms. Fojt occupied the position of "manager," in addition to being an ECE.

60. I further note that both the Appellant's submissions and the section 112(5) record indicate that, if any confusion existed between the "manager" role and the "facility manager" role (which, in my opinion, does not seem to exist), it was created solely by the Appellant's use of these two terms interchangeably in its submissions to the Investigating Delegate. The Appellant cannot now rely on a problem of its own making to argue the deciding Delegate made an error of fact.

61. Overall, I find that none of the errors of fact alleged by the Appellant amount to errors of law.

New Evidence

62. When considering an appeal based on the ground of "new evidence," the Tribunal tests the proposed evidence against multiple considerations:

a) Whether such evidence was reasonably available and could have been provided during the complaint process;

b) Whether the evidence is relevant to a material issue arising from the complaint;

c) Whether it is credible, in the sense that it be reasonably capable of belief; and

d) Whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination.

(see *Davies and others (Merilus Technologies Inc.)*, BC EST # D171/03).

63. The Appellant must satisfy all of the above-referenced conditions before "new evidence" will be admitted into an appeal and the test is a strict one: *EF Holdings Ltd. (Re)*, 2022 BCEST 55.

64. More importantly, this ground of appeal is not meant to allow someone dissatisfied with a determination to submit evidence that should have been presented to the Director before the determination was made: *PR Seniors Housing Management 2 Ltd., 1111369 B.C. Ltd., and 0922182 B.C. Ltd.*, 2024 BCEST 65.

65. I find the materials submitted with the appeal but not provided in the complaint process do not satisfy the conditions for allowing it as "new evidence," and I exercise my discretion not to accept it.

66. One of the documents on which the Appellant relies (i.e., Exhibit "C") contains excerpts of the Appellant's Employee Handbook. This information was before the deciding Delegate when the Determination was made. Therefore, it does not amount to "new evidence" as defined under section 112(1)(c), and consequently, I do not accept this document on this appeal.

67. Another document on which the Appellant relies in support of its appeal is one that the Appellant asserts demonstrates that Ms. Fojt lied about her work schedule in the days before her termination (i.e., Exhibit "D"). However, this document does not seem to be included in the Appellant's appeal package. Regardless, based on the Appellant's explanation of what this document is intended to demonstrate, which I set out below, I am able to conclude that the document was reasonably available and could have been provided to the investigating or deciding Delegate during the complaint proceeding but was not. On this basis, I conclude that the missing document, even if it had been included with the Appellant's appeal package, did not qualify as "new evidence" under section 112(1)(c).

68. Concerning the remainder of the materials included with the appeal (i.e., Exhibits "A," "B," "E," and "F"), the Appellant's submissions indicate that these documents were also reasonably available and could have been provided to the deciding Delegate during the complaint process. Consequently, they do not qualify as "new evidence," as defined under section 112(1)(c).

69. The explanation provided by the Appellant as to why it did not provide these documents during the complaint process is that it "was unaware" and "did not realize that [it] had to prove all of [its] statements with evidence." The Appellant also states that it is submitting these additional documents "as a response to the unanticipated outcome" of the Determination and that it was only when it received the Determination that it realized it ought to have submitted additional documents in support of its position.

70. This argument does not provide a reasonable ground for the Appellant's failure to provide the material to the investigating Delegate during the complaint process.

71. During the complaint process, the investigating Delegate explicitly informed the Appellant, on more than one occasion, that it was imperative for the Appellant to submit any evidence that supported its position at that stage so that it could be included in the IR. The investigating Delegate also informed the Appellant that he could not obtain any documents from external sources and that he could only include in the IR the material submitted by the parties. Therefore, the Appellant knew, or ought to have known, that it must submit all supporting documents to the investigating Delegate at that stage and failing to do so may compromise its case.

72. I also find that the majority of the new material submitted by the Appellant is not probative in that it is not capable of resulting in a different conclusion than what is found in the Determination.

73. The Appellant relies on the statement signed by its managers to support its position that it had just cause to terminate Ms. Fojt because the owner of the Appellant spoke with a representative of the Employment Standards Branch before doing so. This information was already before the deciding Delegate, albeit not in the form of a signed statement from the Appellant's managers. The deciding Delegate also considered the excerpts from the Appellant's Employee Handbook when issuing the Determination. Therefore, these two documents are not capable of leading to a different conclusion in the Determination, given that the information they contain was already before the deciding Delegate.

74. Concerning the material that relates to the "CCOF payment" (i.e., Exhibit "A"), this document illustrates Ms. Fojt's agreement for the Appellant to collect and disclose her personal information to the Province for the administration, planning, evaluation, and auditing of the ECE Wage Enhancement program. The document indicates that the term "CCOF" stands for the "Child Care Operating Fund" program and that the Wage Enhancement was paid as part of this program. While this document may have some probative value, the Appellant failed to disclose it during the complaint process even though it seemed to be in its possession and was relevant to the issues before the deciding Delegate. Therefore, despite its potential probative value, I still cannot accept it as "new evidence" under section 112(1)(c).

75. With respect to the material submitted to demonstrate Ms. Fojt worked on February 3 and 4, 2022, the deciding Delegate found in the Determination that Ms. Fojt was off work until February 3, 2022, and returned to work on February 4, 2022. The Appellant's materials show that Ms. Fojt returned to work on February 3, 2022, not February 4, 2022. The Appellant relies on this document to argue that Ms. Fojt had allegedly endangered the children's safety at the Appellant's facility not just on February 4, 2022, but on February 3, 2022, as well.

76. I find that even if Ms. Fojt returned to work on February 3, 2022, as claimed by the Appellant, this discrepancy does not impact the deciding Delegate's conclusion regarding the issue of just cause.

77. The deciding Delegate stated on pages R17 and R18 of the Determination that Log 4, which addressed the issue of mousetraps and the children's safety, involved a situation where no children were present at the relevant time, and the deficiencies identified could be remedied easily. Based on this, the deciding Delegate found it "difficult to conclude that children were at risk or that the facility's license could be revoked" or that Ms. Fojt's "actions or inactions comprised child safety or [the Appellant's] business." The new information submitted by the Appellant regarding Ms. Fojt's return to work date has no impact on the deciding Delegate's findings concerning Log 4, and, as such, it has no probative value.

78. Finally, the Appellant's Community Care Facility License does not contain any information that could lead to a different outcome in the Determination. It only demonstrates that the Appellant's business consisted of two "Multi-Age Child Care" programs, with a maximum capacity of 16 children. This document does not provide any information that is material to the issues that were before the deciding Delegate.

79. For these reasons, I conclude that the Appellant has failed to establish this ground of appeal, and the material submitted as "new evidence" is not accepted.

Additional Points Raised in the Appeal Submission

80. In its submissions, the Appellant raises some additional points without identifying the specific ground of appeal pursuant to which it is challenging the deciding Delegate's findings. In other words, the Appellant's remaining arguments seem to challenge the deciding Delegate's findings of facts without any suggestion that they amount to an error of law.

81. Although I have not set out these additional arguments in this decision, I confirm that I have reviewed the Appellant's remaining arguments and reject them on the basis that these remaining arguments are an attempt by the Appellant to reargue matters that were before the deciding Delegate to achieve a more favourable outcome.

82. As noted earlier, the Tribunal does not have the authority to consider appeals that seek to have the Tribunal reach a different factual conclusion than those made by the deciding Delegate unless those findings raise an error of law. As noted above, the Appellant's submissions do not suggest, and are not capable of establishing, that the deciding Delegate's findings of facts amount to an error of law.

83. In addition, an appeal to the Tribunal is not meant to be an opportunity for rehashing information and arguments that have already been considered during the complaint, investigation, and determination process under part 10 of the *ESA*: see *Blue-O Technology Inc. (Re)*, 2023 BCEST 58; *Masev Communications*, BC EST # D205/04.

84. The appeal process "is not a forum for the unsuccessful party to have a second chance to advance arguments already advanced in the investigation stage and properly rejected in the determination": *Zameen Sabet (Re)*, 2024 BCEST 21, citing *Chilcotin Holidays Ltd.*, BC EST # D139/00.

85. Accordingly, I reject the Appellant's remaining arguments on the grounds that they attempt to reargue the Appellant's case before the Tribunal.

CONCLUSION AND ORDER

86. Based on the above, I find this appeal has no reasonable prospect of succeeding. The purposes and objects of the *ESA* are not served by requiring the other parties to respond to it. The appeal is dismissed under section 114(1)(f) of the *ESA*.

87. Pursuant to section 115(1)(a) of the *ESA*, I order the Determination dated April 30, 2024, to be confirmed.

/S/ Sherry Shir

Sherry Shir
Member
Employment Standards Tribunal