

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

0821735 B.C. Ltd.
("KFC Chevron")

- of a Determination issued by -

The Director of Employment Standards

PANEL: David B. Stevenson
SUBMISSIONS: Doyun Kim, on behalf of 0821735 B.C. Ltd.
FILE NUMBER: 2024/073
DATE OF DECISION: November 5, 2024

DECISION

OVERVIEW

1. This decision addresses an appeal filed under section 112 of the *Employment Standards Act (ESA)* by 0821735 B.C. Ltd., carrying on business as KFC Chevron (“KFC Chevron”), of a determination issued by Shane O’Grady, a delegate of the Director of Employment Standards, on May 24, 2024 (“Determination”).
2. The Determination found KFC Chevron had contravened Part 3, sections 17 and 28, and Part 4, section 40 and Part 8, section 63, of the *ESA* in respect of the employment of Amardeep Chawla (“Mr. Chawla”) and ordered KFC Chevron to pay Mr. Chawla wages, including vacation pay, in the total amount of \$23,322.58, interest under section 88 of the *ESA* in the amount of \$3,333.17, and to pay administrative penalties in the amount of \$2,000.00. The total amount of the Determination is \$28,655.75.
3. KFC Chevron has appealed the Determination on the ground that the deciding delegate erred in law.
4. In correspondence dated July 8, 2024, the Tribunal, among other things, acknowledged having received the appeal, provided information about the appeal process, 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 from them at that time.
5. The record has been provided to the Tribunal by the Director and a copy has been delivered to KFC Chevron, in care of their legal counsel of record, and to Mr. Chawla. These parties have been provided with the opportunity to object to its completeness. No objection to the completeness of the record has been received from any party.
6. The Tribunal accepts the record is complete.
7. The Tribunal has decided this appeal is appropriate for consideration under section 114 of the *ESA*. At this stage, I am assessing the appeal based solely on the Determination, the reasons for Determination, the appeal, the written submission filed with the appeal, and my review of the material that was before the deciding Delegate when the Determination was being made. Under section 114(1), the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in the subsection, which reads:
 - 114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of any appeal if the tribunal determines that any of the following apply:
 - (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;

- (d) the appeal was made in bad faith or filed for an improper purpose or motive;
- (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
- (f) there is no reasonable prospect that the appeal will succeed;
- (g) the substance of the appeal has been appropriately dealt with in another proceeding;
- (h) one or more of the requirements of section 112 (2) have not been met.

8. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1), the Director and Mr. Chawla will be invited to file submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1), it is liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeal can succeed.

ISSUE

9. The issue in this appeal is whether this appeal should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

BACKGROUND FACTS

10. KFC Chevron operates a restaurant and gas station in Ashcroft, BC.

11. Mr. Chawla was employed as a Food Service Supervisor from September or October 2020 to June 24, 2021. The deciding Delegate found Mr. Chawla's start date was September 7, 2020, and that his wage rate was \$15.00 an hour from his start date until June 1, 2021, and \$15.25 an hour from June 1, 2021, until his employment was terminated.

12. Mr. Chawla filed a complaint alleging KFC Chevron had contravened the *ESA* by failing to pay regular and overtime wages, by failing to pay statutory holiday and annual vacation pay, by making unauthorized deductions from his wages, by requiring him to pay KFC Chevron's business costs, and by terminating his employment without cause or compensation for length of service.

13. In response to the complaint, KFC Chevron took the position there were no amounts owing to Mr. Chawla.

14. The complaint was investigated by a delegate of the Director ("investigating Delegate") who issued an Investigation Report (IR) which was delivered to each party, and who were provided the opportunity to respond to it. Each party provided a response to the IR, which are summarized in the reasons for Determination ("reasons").

15. The deciding Delegate identified four issues in the reasons:

1. Was Mr. Chawla entitled to outstanding wages;

2. Did KFC Chevron take unauthorized deductions from Mr. Chawla's wages;
3. Did KFC Chevron require Mr. Chawla to pay any of its business costs; and
4. Is Mr. Chawla entitled to compensation for length of service?

16. On the first issue, the deciding Delegate found Mr. Chawla was entitled to regular and overtime wages, statutory holiday pay and annual vacation pay.
17. On the second and third issues, the deciding Delegate concluded there was not sufficient evidence to support either of these claims.
18. On the fourth issue, the deciding Delegate found KFC Chevron had not established cause to terminate Mr. Chawla's employment and he was, accordingly, entitled to compensation for length of service.
19. The deciding Delegate found KFC Chevron had contravened several sections of the *ESA* and imposed administrative penalties for those contraventions.

ARGUMENTS

20. KFC Chevron submits the deciding Delegate erred in law by "act[ing] on a view of facts that could not be reasonably entertained" in determining the overtime hours worked by Mr. Chawla.
21. KFC Chevron argues the deciding Delegate relied on questionable evidence presented by Mr. Chawla – Google map data – while "dismissing the evidence provided by" them, which was comprised of their own denials that any overtime was worked and evidence provided by two supporting witnesses to the effect that Mr. Chawla was not working any overtime.

ANALYSIS

22. 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.
23. 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.

24. The Tribunal has adopted the following definition of “error of law” set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.):
1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
 2. a misapplication 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. adopting a method of assessment which is wrong in principle.
25. What is being challenged in this appeal – how much overtime was worked by Mr. Chawla – is a finding of fact. Whether or not the deciding Delegate erred in law in respect to the facts, *simpliciter*, is a question over which the Tribunal has no jurisdiction. In other words, under section 112 of the *ESA*, the Tribunal has no authority to consider an appeal such as this which seeks to have the Tribunal reach different factual conclusions than were made by the deciding Delegate, unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03.
26. A finding of fact is only reviewable by the Tribunal as an error of law on the facts under the third and fourth parts of the definition of error of law adopted by the Tribunal. The test for establishing findings of fact constitute an error of law is stringent. This appeal challenges the deciding Delegate’s findings on the overtime hours worked on the fourth part of the *Gemex* test.
27. At its root, KFC Chevron challenges the decision of the deciding Delegate to accept the evidence provided by Mr. Chawla over that advanced by and on behalf of KFC Chevron. The decision of the deciding Delegate involved a weighing of the evidence provided by each party.
28. It is well established that assessing the weight of the evidence is within the purview of the deciding Delegate and this Tribunal should not intervene lightly. There is also no disputing that a deciding delegate may prefer the evidence of one party over that of another.
29. The conclusions of the deciding Delegate were adequately supported on the material before him. Findings of fact made by the deciding Delegate require deference. The weight of evidence supported the claim made by Mr. Chawla. The deciding Delegate was entitled to reject the assertion of KFC Chevron – and the information provided by the persons supporting KFC Chevron in that assertion – that Mr. Chawla worked no overtime. The reasons for not accepting that assertion, and for giving little weight to the information provided by those supporting KFC Chevron’s assertion, are set out in the reasons, as are the reasons for accepting the evidence of Mr. Chawla on his hours of work.
30. The assessment of the evidence by the deciding Delegate and the findings made by him is, on the substance of the material before him, defensible and the reasons provided by him are firmly grounded in that material. Beyond disputing, on the bald assertion that “Google map data is incredibly easy to fabricate,” KFC Chevron has provided no basis for finding the acceptance by the deciding Delegate of the Google Map information is an error of law as described above. I note here

that the same argument was raised by KFC Chevron during the complaint process, and was answered in the reasons, with the deciding Delegate finding “the Complainant’s Google Maps record, and associated calculation page, as the best, if imperfect, record of what hours he worked.” There was evidence upon which that finding could reasonably be made. Asking the Tribunal to reassess the evidence and alter findings of fact is inconsistent with the usual deferential approach to review of findings of fact.

31. I will summarize here, for clarity, that it is not an error of law for the deciding Delegate to have accepted the evidence of one party over that of another, provided that choice is adequately supported in fact and law, as I find it is in this case.
32. KFC Chevron has failed to show the deciding Delegate made an error of law in determining the overtime hours worked by Mr. Chawla.
33. 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*.

ORDER

34. Pursuant to paragraph 115(1)(a) of the *ESA*, I order the Determination dated May 24, 2024, be confirmed in the amount of \$28,655.75, together with any interest that has accrued under section 88 of the *ESA*.

/S/ David B. Stevenson

David B. Stevenson
Member
Employment Standards Tribunal