



Citation: Dean Hoyle (Re)
2024 BCEST 81

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Dean Hoyle

- of a Determination issued by -

The Director of Employment Standards

PANEL: Carol L. Roberts

SUBMISSIONS: Dean Hoyle, on his own behalf
Naomi Bain, on behalf of Dean Hoyle
Walter Simpson, on behalf of Gold River Seafood Ltd.
Lee Ann Thomson, delegate of the Director of Employment Standards

FILE NUMBER: 2023/185

DATE OF DECISION: September 11, 2024

DECISION

OVERVIEW

1. Mr. Hoyle appeals a determination issued by a delegate of the Director of Employment Standards (“Director”) on November 16, 2023, pursuant to section 112 of the *Employment Standards Act (ESA)*. In that determination (“Determination”), the delegate decided that Mr. Hoyle’s complaint had not been filed within the statutory time period, that she would not extend the time in which Mr. Hoyle could make a complaint, and that she would stop investigating the complaint.
2. Mr. Hoyle’s appeal of that Determination was filed on December 12, 2023, one day past the deadline for filing an appeal. Mr. Hoyle also sought an extension of time to file. The grounds for his appeal are that the Director erred in law and that the Director failed to observe the principles of natural justice in making the Determination.
3. After being notified of the appeal, the Director provided the Tribunal with a copy of the section 112(5) “record,” that is, all the information that was before the delegate when the Determination was being made.
4. Section 114(1) of the *ESA* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria. After reviewing the appeal submissions, I sought submissions from the Director and from Gold River Seafood Ltd. (“Employer”).
5. This decision is based on the section 112(5) “record” that was before the delegate at the time the Determination was made, the submissions of the parties, and the Reasons for the Determination.
6. The Employer’s submission related to the substance of the complaint rather than the issue of whether the Director’s delegate erred in refusing to extend the time in which Mr. Hoyle could file a complaint. As such, I have not referred to those submissions in this decision.

Background

7. On October 16, 2022, Mr. Hoyle sent a letter to the Employment Standards Branch (“Branch”) outlining his employment history and sought assistance in recovering wages and expenses. On November 14, 2022, Mr. Hoyle submitted a complaint form online, along with a copy of his October 16, 2022, letter. Mr. Hoyle indicated that his last day of work was March 8, 2022.
8. The record indicates that on April 4, 2023, a Branch representative spoke with Mr. Hoyle by telephone to obtain information from him and on June 29, 2023, a delegate of the Director emailed Mr. Hoyle advising that she had been assigned to investigate his complaint.
9. On June 29, 2023, the delegate emailed Mr. Hoyle indicating that she had been assigned to investigate his complaint and asked him to call her to discuss it. I infer that Mr. Hoyle contacted the delegate that day, because on June 30, 2023, the delegate emailed Mr. Hoyle indicating that she was following up on their conversation. The delegate asked Mr. Hoyle a series of questions, including an explanation for why his complaint had been filed after the six-month deadline, how many times he

attempted to file the complaint, and if he had any assistance in doing so. The delegate sent another email to Mr. Hoyle on July 6, 2023, informing him that as the complaint appeared to have been made outside the six month deadline, the complaint would not be considered unless special circumstances existed to allow for a late filing. The delegate asked Mr. Hoyle to explain what those circumstances were and again asked him a number of questions, including why the complaint was filed late, whether he had spoken to a Branch representative before filing the complaint, and whether an injustice would result if an extension was not granted. The delegate concluded by informing Mr. Hoyle that if she had not received a response by July 13, 2023, his complaint would be closed, and no further action would be taken.

10. The record suggests that Mr. Hoyle did not respond, and the matter was closed. In early October 2023, Mr. Hoyle contacted the Branch asking a representative to call him to speak to him about his complaint. On October 24, 2023, the delegate forwarded a copy of her July 6, 2023, email correspondence to Mr. Hoyle.
11. Mr. Hoyle responded to the delegate on October 26, 2023, attaching a three-page document outlining his employment history as well as a response to all of her questions. The reasons he outlined for not filing his complaint on time included promises made by his employer to pay him; challenges he had with finding housing; and medical issues, including a broken back, a brain injury, and vision problems. In the correspondence, Mr. Hoyle indicated that he had filed two previous complaints (“my files were sent in two times”) before July 17, 2022, and that when he called to determine if his complaint was received, he was told he would not know because of COVID-related issues. Mr. Hoyle further stated that he was unaware that he had to file the complaint within six months, as that was not clearly stated on the Employment Standards website. He also explained that he needed to add up his receipts to calculate how much he owed before making his complaint.
12. Mr. Hoyle stated that he never received the delegate’s emails because he did not have regular internet access and that, because he was 70 years old, he was not familiar with the internet.
13. The delegate then spoke to Mr. Hoyle on the telephone. Mr. Hoyle informed the delegate that he had filed a complaint in July 2022 but had no evidence it had been received as he had no way of ‘tracing’ it, and that after hearing nothing from the Branch, made another complaint.
14. The record suggests that during that conversation, Mr. Hoyle was losing battery on his cellular telephone and became upset when the delegate informed him that unless he had evidence that he had filed his complaint before six months from the end of employment, his complaint would not be accepted. Their conversation ended abruptly.
15. In her Determination, the delegate found that there appeared to be no dispute that Mr. Hoyle’s application had been made after the six-month statutory limit for filing a complaint set out in section 74(3) of the *ESA*.
16. Having made that determination, the delegate then reviewed the purposes of the *ESA*, including section 2(d) - providing fair and efficient procedures for resolving disputes - in considering whether she should exercise her discretion and grant Mr. Hoyle an extension of time under section 76 (1.1) of the *ESA*.

17. The delegate noted the special circumstances Mr. Hoyle identified that precluded him from filing his complaint within the six-month period:
- After being laid off, Mr. Hoyle had not been paid for five months, collected social assistance and was denied Employment Insurance;
 - Mr. Hoyle contacted Service BC and was directed to the “Government Web Site” and did not obtain any assistance from Service BC;
 - He had to gather receipts and calculate what was owing to him;
 - There was no information on the Branch’s website advising him that there was a six month time period in which to file a complaint;
 - He submitted two complaints and telephoned the Branch to ensure his complaints had been received. After calling the Branch yet another time to follow up on his complaints, he was “brushed off”;
 - He spoke with a Branch representative and was never told of the six month deadline.
18. The delegate wrote that although Mr. Hoyle’s circumstances were “unfortunate” he had demonstrated that he was able to both telephone the Branch as well as access the Branch’s website:
- I am satisfied that... [Mr. Hoyle] was able to access the Branch’s website and submit two wage complaints online, and that he was able to make numerous phone calls to the Branch, wherein he was able to obtain correct information about filing his complaint. As such, I do not find that... [Mr. Hoyle] lacked knowledge about the Act and process for filing a complaint with the Branch.
19. The delegate found there were no special circumstances that precluded delivering the complaint within the time period required. She continued:
- Given this finding, it is not necessary to consider whether an injustice would result as both conditions must be met in order to extend the time period. Accordingly, I am declining to exercise my discretion as the Director’s delegate to extend the time period to deliver a complaint pursuant to section 74(5) of the Act.
20. Mr. Hoyle made submissions on his own behalf initially. However, he secured the assistance of a poverty law advocate in Trail, British Columbia (Ms. Bain) in July 2024, and the Tribunal granted Ms. Bain’s request for an extension of time in which to make submissions.
21. Ms. Bain submitted that Mr. Hoyle had limited education and was not computer literate. As such, she asserted that the “entire process” was well beyond Mr. Hoyle’s capacity, and that the six-month limitation period did not “fairly serve marginalized, uneducated and/or low-income” people who did not fully understand the Tribunal’s rules.
22. Ms. Bain argues that the Employer had submitted no proof of any allegations regarding Mr. Hoyle, and that those allegations did not justify Mr. Hoyle not being paid for his employment.
23. The Director submits that there is no basis for granting the appeal as the Appellant has not demonstrated either an error of law or that the Director failed to observe the principles of natural justice. The Director submits that the reasons Mr. Hoyle provided for filing beyond the six-month

deadline are no different from reasons the Tribunal has previously found to be insufficient, and that his reasons do not amount to a special circumstance.

ANALYSIS

24. Section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:

- the director erred in law;
- the director failed to observe the principles of natural justice in making the determination;
- evidence has become available that was not available at the time the determination was being made.

25. This Tribunal appreciates that many parties are neither legally trained nor legally represented. As such, it takes a large and liberal interpretation of the grounds of appeal, assessing the arguments under each ground of appeal rather than adjudicating the matter based solely on the particular boxes checked by an appellant. (*Triple S Transmission Inc.*, BC EST # D141/03.)

26. Nevertheless, the burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. An appeal is an error correction process, not an opportunity to re-argue a case that has been presented to the Director. I am persuaded Mr. Hoyle has met the burden in this case.

27. I accept that the “entire process” was beyond Mr. Hoyle’s capacity to appreciate. Indeed, I note that Ms. Bains herself misunderstands the process. It is not the Tribunal’s limitation period that is at issue, it is the statutory deadline within which Mr. Hoyle was to file his initial complaint regarding unpaid wages.

Failure to observe the principles of natural justice

28. Natural justice is a procedural right which includes the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker.

29. I find no basis for concluding that the delegate failed to observe the principles of natural justice.

30. I accept that Mr. Hoyle faces significant challenges which hinder his ability to communicate through electronic platforms, including vision issues, limited familiarity with the use of email and online communications, and irregular access to the internet. However, I note that the delegate and indeed other representatives at the Branch, spoke with Mr. Hoyle by telephone and gathered information about his complaint.

31. After informing Mr. Hoyle that it appeared he had not filed his complaint within the statutory time period in which to do so, the delegate sought Mr. Hoyle’s explanation for his failure to do so. She explained the requirements of the legislation and offered him an opportunity to respond. I further note that even though the delegate informed Mr. Hoyle that if he did not respond to her July 6, 2023, email, she would close the matter. However, after Mr. Hoyle re-engaged with the Branch in October 2023, she considered his response before making her decision.

32. I am not persuaded that the delegate denied Mr. Hoyle the opportunity to present his complaint and respond to the delegate's request that he provide an explanation for filing it past the six month deadline.

Error of Law

33. 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.):

- a) a misinterpretation or misapplication of a section of the Act;
- b) a misapplication of an applicable principle of general law;
- c) acting without any evidence;
- d) acting on a view of the facts which could not reasonably be entertained; and
- e) adopting a method of assessment which is wrong in principle.

34. Section 74(3) of the *ESA* provides that complaints must be delivered to the Director within six months after the last day of employment. Section 76(1) provides that, subject to subsection 1.1, the Director is required to accept complaints made under section 74.

35. Subsection 76(1.1) provides that the Director must refuse to accept a complaint if the complaint is not made within the time period required by section 74(3) or (4), or any extension of the applicable time period granted under section 74(5).

36. Section 74(5) provides that the Director may extend the time to deliver a complaint if the director is satisfied that

- (a) special circumstances exist or existed that preclude or precluded the delivering of a complaint within the applicable time period ... and
- (b) an injustice would otherwise result.

37. The Director's delegate determined that there was no dispute that the Mr. Hoyle filed his complaint on October 16, 2022, more than six months after his last day of employment, which he indicated was March 8, 2022. The delegate then considered whether she should exercise her discretion to extend the time period in which to file the complaint under section 76(1.1) of the *ESA*.

38. In deciding not to exercise her discretion in favour of Mr. Hoyle's claim, the delegate considered the purposes of the *ESA*, the importance of the reasons for the statutory time limit, as well as the reasons advanced for the lateness of the filing.

39. The Tribunal will only interfere with the Director's exercise of discretion in exceptional and very limited circumstances, as noted in the following passage in the Tribunal's decision in *Re: Jody L. Goudreau and Barbara E. Desmarais of Peace Arch Community Medical Clinic Ltd.* (BC EST # D066/98):

The Tribunal will not interfere with [the] exercise of discretion unless it can be shown the exercise was an abuse of power, the Director made a mistake in construing the limits of her authority, there was a procedural irregularity, or the decision was unreasonable. Unreasonable, in this context has been described as being:

...a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matter which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. *Associated Provincial Picture Houses v. Wednesbury Corp.* [1948] 1 K.B. 223 at 229. (Re: Jody L. Goudreau and Barbara E. Desmaris, employees of Peach Arch Community Medical Clinic Ltd. (BC EST #D066/98)

40. In *Maple Lodge Farms Limited v. Government of Canada*, [1982] 2 SCR 2, the Supreme Court held:

It is...a clearly established rule that courts should not interfere with the exercise of a discretion by a statutory authority merely because the court might have exercised the discretion in a different manner had it been charged with that responsibility. Where the statutory discretion has been exercised in good faith, and, where required, in accordance with the principles of natural justice, and where reliance has not been placed upon considerations irrelevant or extraneous to the statutory purpose, the courts should not interfere.

41. While I am persuaded that the delegate exercised her discretion in good faith, I am not persuaded that she exercised it reasonably, as there is no evidence she considered all the purposes of the *ESA* or that she considered Mr. Hoyle's unique circumstances.

42. Mr. Hoyle says, and I accept, that he is 70 years old and has a Grade 9 education, and that he suffers from serious disabilities (one of which is a broken back that he sustained after his employment ended). He also has vision problems, has only intermittent access to the internet and limited facility with computers. As a fisherman, he does not have, nor is he likely expected to have, those skills for his employment. Mr. Hoyle explained that, because of his unfamiliarity with government services and procedures, as well as the issues already identified, he was unaware of the six month deadline before he filed his complaint. I am unable to understand how the delegate arrived at her conclusion that Mr. Hoyle did not "...[lack] knowledge about the Act and process for filing a complaint with the Branch." While Mr. Hoyle may well have educated himself to some degree about the *ESA*'s requirements, there is insufficient evidence, in my view, to support the delegate's conclusion that he was aware of those requirements before he filed his complaint.

43. While Mr. Hoyle informed the delegate that he needed to add up receipts to determine how much he was owed before filing the complaint, he also informed her that he had filed a complaint on two occasions, at least one time of which was within three months of the last day of work. When he telephoned the Branch to follow up on whether his complaint had been received, he suggested that he was told that there was no way to confirm whether his complaint was received because of COVID-related issues. It appears the delegate either did not follow up on that assertion or did not believe Mr. Hoyle based on his inability to furnish proof of having delivered the complaint earlier.

44. Mr. Hoyle's circumstances, including his level of education, being only marginally housed, his age and serious medical issues including vision problems and his unfamiliarity with online procedures could, in my view, be considered 'special circumstances,' as set out in section 74(5). The delegate did not identify any of these factors in deciding whether to extend the time for Mr. Hoyle to file his complaint. Rather, she focussed on the fact that he had eventually filed a complaint as evidence no special circumstances existed.
45. Furthermore, the delegate did not appear to consider Mr. Hoyle's assertion that he had filed two complaints within the statutory time period but because they were done online, he had no ability to confirm receipt of them. She also did not appear to consider his response to questions about the possible impact of the COVID-19 pandemic on the processing of that complaint.
46. The delegate also did not appear to consider the question of fairness to Mr. Hoyle if his complaint was not investigated – that is, the possible impact on him if he received no compensation at all for approximately 130 days of work plus his assertion that he was entitled to expenses in excess of \$5,000.
47. In considering whether to exercise her discretion not to extend the deadline for Mr. Hoyle to deliver his complaint, the delegate considered only one of the purposes of the *ESA*, which is to provide fair and efficient procedures for resolving disputes (my emphasis). There are other equally relevant purposes of the *ESA*, including 2(b) – promoting the fair treatment of employees and employers; and 2(a) – ensuring that employees in British Columbia receive at least basic standards of compensation and conditions of employment.
48. Additionally, it does not lie well in the Director's mouth to refuse to consider a complaint that, at best, may have been filed one month late, when the Branch itself took approximately eight months to begin its investigation into Mr. Hoyle's complaint.
49. In conclusion, I find that the delegate improperly exercised her discretion and refer the matter back to the Director for reconsideration.
50. I allow the appeal.

ORDER

51. Pursuant to section 115(1)(b) of the *ESA*, I allow the appeal and refer the matter back to the Director to be considered by a different delegate.

Carol L. Roberts
Member
Employment Standards Tribunal