

Citation: Scott Spring Ltd.
2024 BCEST 115

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Scott Spring Ltd.
("Employer")

- of a Determination issued by -

The Director of Employment Standards

PANEL: Carol L. Roberts
SUBMISSIONS: Christopher Drinovz, legal counsel for Scott Spring Ltd.
FILE NUMBER: 2024/103
DATE OF DECISION: December 4, 2024

DECISION

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act (ESA)*, Scott Spring Ltd. (“Employer”) appeals a determination issued on July 2, 2024 (“Determination”) by a delegate of the Director of Employment Standards (“Director”).
2. Jagbir Singh (“Employee”) filed a complaint with the Director alleging that the Employer had contravened the *ESA* in failing to pay him wages.
3. A delegate of the Director (“Investigator”) investigated the Employee’s complaint and issued an Investigation Report (“Report”), which was provided to the parties for response on May 16, 2024. The Director reviewed the information produced during the investigation, the Investigation Report, and the responses of the parties to the Investigation Report before issuing the Determination.
4. The Director determined that the Employer had contravened sections 17, 18, and 58 of the *ESA* in failing to pay the Employee wages and annual vacation pay and that the Employee was entitled to wages and accrued interest in the total amount of \$1,846.53.
5. The Director also imposed a \$500 administrative penalty for the contravention of section 18 of the *ESA* for a total amount owing of \$2,346.53.
6. The Employer contends that the Director erred in law.
7. After receiving the Employer’s appeal, the Tribunal sought disclosure of the section 112(5) record that was before the Director at the time the Determination was made. On October 21, 2024, the Employer confirmed that the record was complete.
8. Section 114 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 and the record, I found it unnecessary to seek submissions from the Employee or the Director.
9. This decision is based on the section 112(5) record that was before the Adjudicating delegate at the time the decision was made, the appeal submission, and the Reasons for the Determination.

FACTS

10. The Employer is a British Columbia incorporated company which operates a business specializing in auto spring, suspension, and frame repairs in Surrey, British Columbia.
11. The Employee was employed from August 17, 2021, to September 20, 2022. Initially hired as an office administrator, his duties changed in August 2022, and he was promoted to the role of office manager.

12. In September 2022, the Employee experienced medical issues which caused him to quit his job. In his complaint, the Employee alleged that the Employer failed to pay him regular wages for the work he performed during his final pay period as well as his accrued vacation pay.
13. The Investigator telephoned Kawaljit Singh Sahota, the Employer's sole director and officer, to discuss the complaint. Mr. Sahota claimed that the Employee was lying and directed the Investigator to address all questions to his lawyer. After this conversation, the Investigator sent the Employer a Demand for Employer Records and a copy of the Employee's complaint form. The Demand requested that the Employer provide copies of the Employee's payroll records and records relating to his hours of work and conditions of employment to the Director by October 31, 2023.
14. The Employer's lawyer requested, and was granted, additional time to November 15, 2023, to provide the records to the Director. On October 31, 2023, the Employer's lawyer provided the Director with a record of the Employee's daily hours of work for the period August 16, 2021, until September 30, 2022, along with a note that indicated that the Employer may have overpaid the Employee. On November 9, 2023, counsel provided the Director with the Employee's wage statements from August 2021 until September 2022.
15. The Investigator made several attempts to obtain additional information from counsel by both telephone and email, specifically about whether the Employee was paid his final wages or vacation pay. Despite these requests and extensions of time to provide the information, no additional information was provided.
16. The Investigator made a final attempt to obtain information prior to issuing the Investigation Report. Although the Investigation Report was delivered to the Employer on May 17, 2024, and the Employer was asked to provide any response, no additional information was provided.
17. The Director determined that there was no evidence that the Employee had been paid his final wages and found that he was entitled to regular wages in the amount of \$506.92.
18. The Director further found that the payroll records provided by both parties showed that the Employee had accrued vacation pay on regular and overtime wages but never on statutory holiday pay. The records showed that the Employee was paid \$209.71 in vacation pay over five pay periods from March 1 to May 15, 2022. The Adjudicating delegate determined that the Employee was entitled to a further amount of \$1,147.26.

ARGUMENT

19. The Employer contends that the Adjudicating delegate erred in finding that there was "no evidence" demonstrating that the Employee had been paid final wages or vacation pay. The Employer submits that it provided the Investigator with copies of pay stubs establishing that it had paid the Employee appropriately and promptly.

ANALYSIS

20. Section 114(1) of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the 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, 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.
21. 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.

Error of Law

22. 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;
 - 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.
23. Although it is not clear in the Determination, the Investigation Report indicates that while the Employer provided the Director with some employer records including wage statements, the

Employee denied that he received the cheques that corresponded with the final two wage statements submitted by the Employer.

24. The final two wage statements and corresponding cheque numbers indicated that the Employee was paid \$513.00 wages on one cheque, and \$1,017.79 for all unused vacation pay on a second cheque. The Employee reported that he emailed the Employer in October 2022, and February and March 2023, and sent text messages in December 2022 and March 2023, asking for his Record of Employment, final wages, and remaining vacation pay. The Employee provided the Investigator with screen shots of the messages and said that he had never received a response.
25. The Investigation Report indicates that the Investigator made several attempts to have the Employer provide proof that the last two cheques had been cashed, including leaving five voice messages with the Employer's lawyer. The Investigator did not receive a response. These facts were set out in the May 16, 2024, Investigation Report which was sent to the parties for response. The Employer did not make any submissions in response to the Investigation Report.
26. I find that the Employer has not demonstrated any error of law in the Determination. The Employer did not dispute any facts outlined in the Investigation Report, including the Investigator's statement that, despite asking for evidence that the Employee cashed the last two cheques issued, no evidence was provided.
27. In conclusion, I find, pursuant to section 114(1)(f), that there is no reasonable prospect that the appeal will succeed.
28. I dismiss the appeal.

ORDER

29. Pursuant to section 114(1)(f) of the *ESA*, I deny the appeal. Accordingly, pursuant to section 115(1)(a) of the *ESA*, the Determination, dated July 2, 2024, is confirmed in the amount of \$2,346.53, together with whatever interest may have accrued since the date of issuance.

/s/ Carol L. Roberts

Carol L. Roberts
Member
Employment Standards Tribunal