

Citation: Mustafa Abdirizak
2025 BCEST 6

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Mustafa Abdirizak

- of a Determination issued by -

The Director of Employment Standards

PANEL: Jeremy Bryant
SUBMISSIONS: Mustafa Abdirizak, on his own behalf
FILE NUMBER: 2024/124
DATE OF DECISION: January 9, 2025

DECISION

OVERVIEW

1. Mustafa Abdirizak appeals a determination of a delegate (the “**Delegate**”) of the Director of Employment Standards (the “**Director**”) which found his former employer, Charl-Pol Inc. (the “**Employer**”), did not contravene the *Employment Standards Act (ESA)* as it voluntarily paid him compensation for length of service with interest (the “**Determination**”).
2. The Delegate found, “regardless of the dispute between the parties concerning how Mr. Abdirizak’s employment ended,” the voluntary payment fully satisfied the compensation he would be entitled to under the *ESA*.
3. Mr. Abdirizak maintains he was constructively dismissed before his employment was formally terminated. His appeal submission focusses on the Employer’s behaviour at the end of his employment and during the investigation of his complaint (the “**Investigation**”) when the Employer took the position he quit.
4. I have confirmed the Determination and dismissed Mr. Abdirizak’s appeal as it has no reasonable prospect of success. The Employer’s voluntary payment of compensation for Mr. Abdirizak’s length of service satisfied his complaint for *ESA* purposes.

ISSUES

5. While Mr. Abdirizak limits his grounds of appeal to an allegation, the Director failed to observe the principles of natural justice, his submission also raises allegations the Director erred in law, so I have addressed both of those grounds of appeal.
6. I have determined the issues on appeal are as follows:
 - I. Did the Director err in law by failing to consider whether Mr. Abdirizak was constructively dismissed under section 66 of the *ESA*?
 - II. Did the Director err in law by not considering the Employer’s failure to compensate Mr. Abdirizak for his length of service within 48 hours of his termination in accordance with section 18 of the *ESA*?
 - III. Did the Director fail to observe the principles of natural justice in making the determination by ignoring alleged inconsistencies in the Employer’s version of events?

ANALYSIS

- I. **Did the Director err in law by failing to consider whether Mr. Abdirizak was constructively dismissed under section 66 of the *ESA*?**
7. Mr. Abdirizak says he may have met the criteria for constructive dismissal under section 66 of the *ESA* as his hours were reduced, he was subjected to bullying and harassment, the Employer

threatened to cut his food allowance, he was falsely accused of safety infractions, and he was unjustly suspended.

8. Section 66 of the *ESA* provides:

If a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated.

9. The Delegate concluded she was not required to decide whether Mr. Abdirizak was terminated as the Employer voluntarily paid him for his length of service.

10. This conclusion was clearly not an error in law under the Tribunal's well-established test as it was not:

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.

Gemex Developments Corp. v. British Columbia (Assessor of Area #12 - Coquitlam), 1998 CanLII 6466 (BC CA), [1998] B.C.J. No. 2275 (B.C.C.A.).

11. The remedy for constructive dismissal under section 66 of the *ESA* is compensation for length of service under section 63. In other words, had the Delegate found Mr. Abdirizak was constructively dismissed, he would have been entitled to the same amount of compensation that was voluntarily paid by the Employer. Accordingly, the Delegate was correct in her application of the law. She identified the constructive dismissal issue had been rendered moot by the payment of compensation for length of service.

12. Section 76(3)(i) of the *ESA* gives the Director discretion to stop reviewing or investigating a complaint if they decide the complaint has been resolved. While the Delegate did not refer to that section in the Determination, her reasoning was totally consistent with it.

II. Did the Director err in law by not considering the Employer's failure to compensate Mr. Abdirizak for his length of service within 48 hours of his termination in accordance with section 18 of the *ESA*?

13. Mr. Abdirizak argues the Employer's failure to pay him compensation for length of service within 48 hours of his termination, as required by section 18 of the *ESA*, should be considered as evidence supporting the need for a formal determination of his employment status.

14. He argues the Employer maintaining a position he quit as opposed to admitting they had terminated his employment, led them to unjustly delay payment of his compensation for length of service.

15. The Delegate did not err in law with respect to considering the Employer's delay in paying compensation for length of service. She acted on the evidence of the delayed payment and applied the section 88 interest provisions of the *ESA* to ensure Mr. Abdirizak was compensated for the delay (from the date the Employer provided Mr. Abdirizak a termination letter on April 13, 2023, to the date he was paid).

III. Did the Director fail to observe the principles of natural justice in making the Determination by ignoring alleged inconsistencies in the Employer's version of events?

16. Although he does not clearly articulate how he was denied natural justice by the Director, Mr. Abdirizak argues the Delegate should have resolved alleged contradictions in the Employer's evidence and arguments during the Investigation. He argues, the Employer's contradictory statements undermined the principles of fairness and transparency expected under the *ESA* and the fairness of the Investigation process.

17. In *Taggart (Re)*, 2022 BCEST 66, the Tribunal summarized the meaning of natural justice at paragraph 44:

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. It does not mean that the Director's delegate must arrive at a conclusion the appellant considers just and fair.

18. A failure to consider all evidence submitted may also constitute a breach of natural justice principles: *C and C Taxi Inc.*, BC EST # D084/13.

19. Mr. Abdirizak's argument specifically focuses on the Employer initially indicating "lack of work" on his Record of Employment which was inconsistent with their later claim he voluntarily resigned. He also takes issue with a statement made by the Employer's representative during the Investigation, to the effect of the Employer not understanding why a termination letter was issued to Mr. Abdirizak, given their belief he had quit. This statement was more of an observation than evidence, which the Delegate was not required to respond to under the principles of natural justice. However, even if I were to accept the statement was evidence, I cannot find the Delegate ignored it or any other evidence.

20. At page R3 of the Determination, the Delegate notes she reviewed the Investigation Report, which contained the statement of concern, as well as all evidence and arguments submitted by the parties during the Investigation. The Delegate recognized there was no dispute between the parties that Mr. Abdirizak received a termination letter from the Employer on April 13, 2023, which took effect that date. She ultimately did not have to consider or resolve any contradictions in the evidence, given the Employer's voluntary payment of compensation for length of service resolved Mr. Abdirizak's claim.

21. Accordingly, the Director did not fail to observe the principles of natural justice by ignoring evidence presented regarding the end of Mr. Abdirizak's employment or in any other respect.

CONCLUSION

22. Mr. Abdirizak asks the Tribunal to make a “formal determination of [his] employment status.” However, he can be under no impression that he remains employed by the Employer as he was provided a termination letter and compensation for length of service. His claim was not under the categories in section 79(2) of the *ESA* where reinstatement was a possible remedy, and the *ESA* does not provide damages to employees arising out of how their employment was terminated.
23. Mr. Abdirizak is essentially asking the Tribunal to affirm his version of events regarding the end of his employment. That is not the role of the Tribunal. The Tribunal assesses whether an appeal of a Director’s determination has merit under the grounds set out in section 112(1) of the *ESA*.
24. Mr. Abdirizak correctly acknowledges employment standards processes are designed to resolve issues efficiently. This is consistent with the section 2(d) purpose of the *ESA* to provide “fair and efficient procedures for resolving disputes.” This purpose would not be served in this case if the Director were required to resolve a dispute regarding the end of Mr. Abdirizak’s employment as the underlying complaint has been resolved by the Employer’s voluntary payment of compensation for length of service.
25. Section 114(1)(f) of the *ESA* allows the Tribunal to dismiss an appeal where there is no reasonable prospect the appeal would succeed. I have exercised my discretion to dismiss Mr. Abdirizak’s appeal on that basis.

ORDER

26. The appeal is dismissed pursuant to section 114(1)(f) of the *ESA* as it has no reasonable prospect of success.
27. Pursuant to section 115(1)(a) of the *ESA*, the Determination is confirmed.

/S/ Jeremy Bryant

Jeremy Bryant
Member
Employment Standards Tribunal