Citation: Crispy Falafel Inc.
2025 BCEST 16

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Crispy Falafel Inc.

- of a Determination issued by -

The Director of Employment Standards

PANEL:	Shafik Bhalloo, K.C.
SUBMISSIONS:	Mayank Verma, legal counsel for Crispy Falafel Inc.
FILE NUMBER:	2024/102
DATE OF DECISION:	January 30, 2025

DECISION

OVERVIEW

1. This appeal concerns a determination made under section 81 of the *Employment Standards Act* (***ESA***) on June 24, 2024 (the "**Determination**"), arising from complaints filed by five individuals—Rafic Abboud ("**Mr. Abboud**"), Mohammad Mustafa (aka Mohammad Mustafa Alkhateb referred to hereafter as "**Mr. Alkhateb**"), Amr Mohamed (also known as Amr Halem and Amr Abbas Abdelhalem Mohamed, referred to hereafter as "**Mr. Abdelhalem**"), Ali Alnajar, and Mohamed Mohamed also known as Mohamed Helal (collectively, the "**Complainants**")—against Our Lebanese Food House Ltd. (**OLFH**), Crispy Falafel Inc. (**CFI**) and/or Pyramids Trade Corporation (**PTC**) (collectively, the "**Respondents**"). The Complainants alleged that the Respondents failed to pay wages, bonuses, or commissions for work performed during their employment. The Respondents jointly operated a food trailer business, "Crispy Falafel Express," which was active in Vancouver from March 3 to May 15, 2023.

2. A delegate of the Director of Employment Standards (the "**Investigator**") conducted an investigation, which culminated in an Investigation Report (**IR**) summarizing the evidence and arguments. The parties were given an opportunity to review and respond to the IR. Based on the IR and the submissions received, another delegate of the Director (the "**Delegate**") issued the Determination, addressing the following key issues:

    a. Who is the employer of the Complainants under the [*ESA*]?

    b. Is Mr. Abdelhalem an employee as defined by the [*ESA*]?

    c. Are any of the Complainants managers under the *Employment Standards Regulation*?

    d. Are the Complainants owed wages, and if so, how much?

3. The Delegate determined that OLFH, PTC, and CFI collectively constituted a partnership and were jointly the employer of the Complainants under the *ESA*. OLFH provided foundational support, including the food trailer, start-up costs, and management of the business account where all revenues were deposited, ensuring the financial infrastructure of the operation. PTC managed day-to-day operations, such as hiring, training, and scheduling employees, while CFI supplied food and maintained quality standards. The shared decision-making among the three entities, including collective hiring, setting menu pricing, and approving business extensions, as well as the profit-sharing arrangement outlined in the unsigned "Operations Agreement Proposal" (the "**Proposal**"), reinforced the conclusion that they operated as partners and were jointly responsible for the Complainants' employment.

4. The Delegate also concluded that Mr. Abdelhalem, as the sole director of PTC, was not an employee under the *ESA*. His role as the Operations and Projects Manager involved directing and controlling the business rather than working under another party's supervision. The Proposal outlined compensation tied to PTC's share of profits, and there was no evidence of an employment agreement, wages owed, or distinct work performed under the control of another party. Accordingly, the Delegate found that Mr. Abdelhalem was acting in his capacity as a director and not as an employee.

5. In determining whether any of the Complainants were managers excluded from *ESA* protections under the *Employment Standards Regulation*, the Delegate found that most Complainants performed non-managerial tasks such as food preparation and customer service. They lacked decision-making authority, control over budgets, or other responsibilities indicative of managerial roles, and were therefore entitled to the protections of the *ESA*. However, the Delegate determined that Mr. Alkhateb's duties were primarily managerial, as he supervised employees, scheduled shifts, and handled operational matters. His responsibilities met the regulatory definition of a manager, excluding him from entitlement to overtime or statutory holiday pay. Nonetheless, the Delegate concluded that Mr. Alkhateb was owed wages based on undisputed records of hours worked.

6. Finally, the Delegate conducted a comprehensive review of the amounts owed to the Complainants by analyzing time sheets, payroll records, and other documentation. Inconsistent or incomplete records provided by the Respondents were weighed against them. Minimum wage rates were applied to calculate amounts owed, and claims for bonuses or additional compensation were only accepted if corroborated by evidence. The Delegate provided detailed calculations for each Complainant, specifying amounts owed for wages, statutory holiday pay, and vacation pay.

APPEAL SUBMISSIONS OF CFI

7. Counsel for CFI argues that the Director erred in law by determining that CFI was an employer of the complainants. CFI had no control or direction over the Complainants' work, was not involved in their hiring, and played no role in drafting or negotiating their employment contracts or probationary terms. The complaints were filed specifically against OLFH and PTC, with no allegations or claims naming CFI as the employer.

8. Counsel emphasized that CFI's role was limited to providing goods and services to the food truck venture operated by OLFH and PTC under a verbal agreement with Mr. Abdelhalem, a director of PTC and one of the Complainants. This agreement included supplying food on credit, allowing the use of CFI's business logo for marketing purposes, and providing one-time training to the food truck's employees. CFI did not manage or oversee the operations of the food truck, did not control its employees, and was not involved in any employment-related decisions. All operational and financial matters, including recording working hours, paying wages, and depositing proceeds, were handled exclusively by OLFH and Mr. Abdelhalem.

9. Further, counsel highlights that CFI's relationship with OLFH resembled that of a franchisor and franchisee. CFI's involvement was limited to granting the use of its logo in exchange for royalties and supplying food products on credit. CFI is not responsible for the actions or employment practices of OLFH, which managed the food truck independently. Counsel concludes that the employment relationship was solely between the complainants and OLFH/PTC, and that the Director's finding of employer liability against CFI was unfounded.

10. Additionally, counsel notes that CFI is a vendor that remains unpaid for the supplies provided to OLFH and is, in fact, a creditor rather than an employer in this matter. Counsel argues that the Director's decision to hold CFI liable was not only legally incorrect but also inconsistent with the evidence. CFI's actions, as outlined in the verbal agreement, do not meet the statutory definition of an employer under the *ESA*.

11. For the reasons set out below, I conclude that CFI's appeal lacks a reasonable prospect of success. CFI has not established that the Director erred in law or committed any reviewable error in issuing the Determination. Consequently, I dismiss the appeal without seeking submissions from the other parties, pursuant to section 114(1)(f) of the *ESA*.

ISSUE

12. Has CFI demonstrated a reasonable prospect of success in arguing that the Director erred in law by determining that CFI, along with OLFH and PTC, was an employer of the Complainants operating as Crispy Falafel Express?

ANALYSIS

13. The grounds for appeal are statutorily limited to those set out in subsection 112(1) of the *ESA*, which states:

> 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.

14. An appeal is not merely an opportunity to re-litigate the merits of a claim before a different decision-maker. It is a process of error correction, where the burden is on the appellant to demonstrate to the Tribunal that there is an error in the determination, based on one of the statutory grounds.

Error of Law

15. In this case, as noted, CFI appeals the Determination on the ground of an error of law, arguing that the Delegate erred in concluding that CFI, along with OLFH and PTC, was an employer of the Complainants.

16. The Tribunal has adopted the definition of "error of law" as outlined by the British Columbia Court of Appeal in *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.), which includes the following:

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 that could not reasonably be entertained; and
5. Adopting a method of assessment that is wrong in principle.

17. Determining whether a person qualifies as an employer under the *ESA* is a mixed question of law and fact, which requires applying the facts as found to the relevant legal principles under the *ESA*.

18. A decision made by the Director on a mixed question of law and fact is entitled to deference. As noted in *Britco Structures Ltd.*, BC EST # D260/03, citing paragraph 35 of the Supreme Court of Canada in *Canada (Director of Investigation and Research, Competition Act) v. Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748: "Questions of law are questions about what the correct legal test is; questions of fact are questions about what actually took place between the parties; and questions of mixed law and fact are questions about whether the facts satisfy the legal tests." An error of law may arise in a mixed law and fact case if the legal issue is misapplied in a way that results in an error.

19. Once the applicable legal principles are properly applied, the question of whether someone is an employer under the *ESA* becomes a matter of factual inquiry. The Tribunal does not have jurisdiction to assess whether the Director erred in law in relation to the facts. Applying the correctly identified legal principles to the facts as found by the Director does not, on its own, amount to an error of law. A finding of fact can only be reviewed as an error of law by the Tribunal if the Director or her Delegate acted without evidence or adopted a view of the facts that could not reasonably be entertained, as defined in the third and fourth categories of the Tribunal's adopted definition of error of law.

20. This is not a case where the Delegate acted without any evidence.

21. The test for determining whether the Delegate acted on a view of the facts that could not reasonably be entertained is as follows:

> ... that there is no evidence before the Board which supports the finding made, in the sense that it is inconsistent with and contradictory to the evidence. In other words, the evidence does not provide any rational basis for the finding. It is perverse or inexplicable. Put still another way, in terms analogous to jury trials, the Appellant will succeed only if it establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have come to the determination, the emphasis being on the word "could".

See *Delsom Estate Ltd. v. British Columbia (Assessor of Area No. 11 Richmond/Delta*, 2000 BCSC 289 (CanLII), [2000] B.C.J. No. 331 (B.C.S.C.) at para. 18, cited with approval in *British Columbia (Assessor Area No. 27-Peace River) v. Burlington Resources*, 2003 BCSC 1272.

22. Having reviewed the Determination and the full record, I find that the Delegate's conclusion was correct in identifying CFI as an employer within the meaning of the *ESA*. The *ESA* defines an employer as a person who "has or had control or direction of an employee" or "is or was responsible, directly or indirectly, for the employment of an employee." The evidence supports the Delegate's finding that CFI exercised control over the complainants and shared responsibility for their employment alongside OLFH and PTC, notwithstanding CFI's assertions to the contrary.

23. CFI's appeal submissions primarily argue that it did not hire, supervise, or manage the complainants and lacked control over their work. However, the Delegate appropriately considered the terms of the unsigned Proposal, which detailed the respective roles of OLFH, PTC, and CFI. The Proposal assigned CFI responsibility for supply chain and quality management, as well as for training and supervising employees in this capacity. The evidence demonstrated that CFI's role extended beyond

supplying goods and services; it actively engaged in the operational framework of the business by overseeing the quality and delivery of its product, which necessarily involved interaction with and oversight of employees. The Delegate reasonably concluded that this level of involvement satisfied the statutory definition of an employer.

24. While CFI characterized its relationship with OLFH as akin to that of a franchisor and franchisee, emphasizing its limited role in supplying food products and licensing its logo, the evidence revealed a more integrated and direct relationship. Unlike a typical franchisor, CFI was involved in the day-to-day operations of the business through training, supervision, and quality assurance responsibilities, as outlined in the Proposal. Additionally, the profit-sharing arrangement, in which CFI received 25% of net profits, highlighted its stake in the business's operations and success. I find that these factors differentiate CFI's role from that of a mere franchisor and supported the Delegate's conclusion that CFI was a co-employer alongside OLFH and PTC.

25. CFI's argument that it was merely a creditor of OLFH due to unpaid food costs does not negate its concurrent role as an employer. The Delegate properly considered the totality of the evidence, including the operational responsibilities detailed in the Proposal and the manner in which the business was conducted. While a creditor-debtor relationship may have existed regarding unpaid invoices, this financial arrangement did not diminish CFI's active participation in the management and oversight of employees.

26. The evidence further indicated that the food truck operation was a joint endeavor in which OLFH, PTC, and CFI each played a distinct role: OLFH provided the food trailer and initial funding, PTC managed daily operations, and CFI supplied products, provided training, and ensured quality assurance. Decisions regarding hiring, training, and scheduling employees were made collaboratively, reflecting shared responsibility for employment matters. This collective approach was consistent with the Proposal, which described the parties as "business partners," despite its unsigned status. The Delegate reasonably concluded that all three entities were employers under the *ESA* based on their joint participation in the operation.

27. To succeed on appeal, CFI must establish that the Delegate's interpretation or application of the law was unreasonable or unsupported by the evidence. However, the Delegate's decision was firmly grounded in the statutory definition of an employer and supported by a comprehensive review of the evidence. CFI's appeal largely seeks to reargue the factual findings of the Determination, but an appeal is an error-correction process, not an opportunity for factual reassessment. The Tribunal is reluctant to interfere with the Delegate's findings unless a clear error of law is demonstrated, which CFI has not established in this case.

CONCLUSION

28. Therefore, I find no reviewable error in the Delegate's conclusion that CFI, along with OLFH and PTC, was an employer under the *ESA*. The appeal fails to identify any substantive error in law or in the application of the evidence, and I accordingly dismiss it.

29. **ORDER**

30. Pursuant to section 114(1)(f) of the *ESA*, I dismiss the appeal. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination.

/S/ Shafik Bhalloo

Shafik Bhalloo, K.C.
Member
Employment Standards Tribunal