Citation: Scott Spring Ltd.
2025 BCEST 19

EMPLOYMENT STANDARDS TRIBUNAL

An application for reconsideration
pursuant to section 116 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

- by -

Scott Spring Ltd.

- of a Decision issued by -

The Employment Standards Tribunal

PANEL:	Kenneth Wm. Thornicroft
SUBMISSIONS:	Chris Drinovz, legal counsel for Scott Spring Ltd.
FILE NUMBER:	2025/007.ESA.RE
DATE OF DECISION:	February 4, 2025

DECISION

INTRODUCTION AND FACTUAL BACKGROUND

1. Scott Spring Ltd. (the "**applicant**") applies for reconsideration of 2024 BCEST 115, an appeal decision issued on December 4, 2024 (the "**Appeal Decision**") by Tribunal Member Roberts. The application is made pursuant to section 116 of the *Employment Standards Act* (the "***ESA***").

2. Tribunal Member Roberts confirmed a Determination issued by a delegate of the Director of Employment Standards (the "**delegate**") on July 2, 2024. By way of the Determination, the delegate ordered the applicant to pay a total of $1,846.53 on account of unpaid wages ($506.92 for regular wages; $1,147.26 for accrued vacation pay) and section 88 interest ($192.35) payable to a former employee (the "**complainant**"). The delegate also levied a $500 monetary penalty against the applicant based on its contravention of section 18 of the *ESA*. Accordingly, the applicant's total liability under the Determination is $2,346.53. The delegate also issued his "Reasons for the Determination" (the "**delegate's reasons**") concurrently with the Determination.

3. The essence of the dispute between the applicant and the complainant concerned whether the latter had been paid wages earned during his final pay period and accrued vacation pay. Prior to the issuing the Determination, and as recorded at page R4 of the delegate's reasons:

> ...the investigating delegate requested information to determine whether [the complainant] was paid his final wages or vacation pay. While further extensions were provided for [the applicant's legal counsel] to obtain this information or instructions from [the applicant] on how they should proceed with the investigation, no further information was provided.

4. The delegate held as follows with respect to the complainant's unpaid wages and accrued overtime pay claims (at pages R5-R6):

> While [the applicant] was given ample opportunity to participate in the investigation, there is no evidence which demonstrates [the complainant] was paid his final wages. Given the available evidence demonstrates that [the complainant] worked a total of 26.68 regular hours that remain unpaid, I find he is owed a total of $506.92 in regular wages (26.68 hours x $19.00 per hour) ...
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> Given there is no evidence which demonstrates [the complainant] was paid his vacation pay after he resigned, and given the information above, I find [the complainant] is owed a total of $1,147.26 in vacation pay ($1,356.97 accrued - $209.71 paid).

5. The applicant appealed the Determination, alleging that the delegate erred in law (section 112(1)(a) of the *ESA*). The Tribunal dismissed the appeal, and the applicant now applies to have the Appeal Decision reconsidered.

FINDINGS AND ANALYSIS

6. The applicant's reasons supporting its appeal were essentially identical to the reasons it now advances to support its section 116 reconsideration application, as is clear from the following table:

Applicant's Reasons for Appeal	Application for Reconsideration
2. The appellant submits that the delegate erred in the application of general law and acting on a view of the facts which could not be reasonably entertained. The delegate frequently remarked that there was "no evidence" which demonstrated that [the complainant] was paid his final wages or vacation pay after he resigned; however, this is factually incorrect. In fact, the appellant provided the investigating delegate with copies of pay stubs affirming that it had appropriately and promptly provided payment to [the complainant]. 3. A copy of Cheque No. 1839 can be found at Appendix A. This document confirms that [the complainant] was paid $483.38 net on October 3, 2022 for 27 hours of work between September 16, 2022 and September 30, 2022. 4. A copy of Cheque No. 1859 can be found at Appendix B. This document confirms that [the complainant] was paid $894.79 net on November 5, 2022 for his vacation accrual payout. 5. As aforementioned, these documents were previously provided to the investigating delegate for consideration. The appellant submits that the delegate erred in law and/or in an unreasonable view of the facts based on the fact that the appellant paid the appropriate wages and vacation [pay] to [the complainant].	2. The appellant [*sic*] submits that both the delegate of the Employment Standards Branch erred in the application of general law and acting on a view of the facts which could not be reasonably entertained. The delegate frequently remarked that there was "no evidence" which demonstrated that [the complainant] was paid his final wages or vacation pay after he resigned; however, this is factually incorrect. In fact, the appellant [*sic*] provided the investigating delegate with copies of pay stubs affirming that it had appropriately and promptly provided payment to [the complainant]. 3. A copy of Cheque No. 1839 can be found at Appendix A. This document confirms that [the complainant] was paid $483.38 net on October 3, 2022 for 27 hours of work between September 16, 2022 and September 30, 2022. 4. A copy of Cheque No. 1859 can be found at Appendix B. This document confirms that [the complainant] was paid $894.79 net on November 5, 2022 for his vacation accrual payout. 5. As aforementioned, these documents were previously provided to the investigating delegate for consideration. The appellant [*sic*] submits that the delegate erred in law and/or in an unreasonable view of the facts based on the fact that the appellant [*sic*] paid the appropriate wages and vacation [pay] to [the complainant]. 6. On appeal, the member of the Employment Standards Tribunal determined that the appellant [*sic*] had not demonstrated any error

	of law in the initial Determination, and as a result, the appeal was dismissed under s 114(1)(f) of the Act (no reasonable prospect of success). The appellant [*sic*] argues that this too was an error of fact and/or law, as the evidence clearly shows that [the complainant] was appropriately paid.

7. Tribunal Member Roberts addressed the applicant's argument as follows (at paras. 25-26):

> 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 [applicant'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 [applicant] did not make any submissions in response to the Investigation Report.
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> I find that the [applicant] has not demonstrated any error of law in the Determination. The [applicant] did not dispute any facts outlined in the Investigation Report, including the Investigator's statement that, despite asking for evidence that the [complainant] cashed the last two cheques issued, no evidence was provided.

8. Although it may be fair to say that the applicant provided *some* evidence, rather than *no* evidence, regarding actual payment to the complainant of the two disputed payments, the evidence submitted falls well short of being credible and cogent evidence regarding actual payment. Contrary to the applicant's submission, the proffered "evidence" does not take the form of copies of "cheques." Rather, the applicant has provided copies of wage statements, presumably to show that cheques had been prepared. However, this evidence does not prove that the cheques were actually issued to the complainant and, most importantly, subsequently cashed by him. The applicant could have provided copies of its bank statements corroborating payment, or copies of the actual cheques showing that they had been cleared through the applicant's bank account, but it did not provide this evidence. Surely, the applicant has (or can easily obtain) the requisite bank records, and I find it curious that it has never provided those records. The wage statements, standing alone, quite simply do not constitute proof of *payment*, and it was proof of payment that the applicant was specifically and repeatedly asked to provide. It has never done so.

9. I might also add that even if such evidence had been provided on appeal (as "new evidence" within section 112(1)(c) of the *ESA*), the applicant would have been required to explain why this evidence was not provided to the Director of Employment Standards during the complaint investigation process (see *Davies et al.*, BC EST # D171/03).

10. In my view, this application, as is clear from the above Table, is nothing more than a rehash of the same arguments that have now been considered and rejected twice over. The reconsideration process is not intended to allow parties to simply advance the same arguments that were considered and properly rejected on appeal. As such, this application does not pass the first stage of the *Milan Holdings* test (see *Director of Employment Standards*, BC EST # D313/98). Further, even if this

application had passed the first stage of the *Milan Holdings* test, I would have nonetheless confirmed the Appeal Decision since I consider this application to be substantively without merit.

ORDER

11. Pursuant to section 116(1)(b) of the *ESA*, the Appeal Decision is confirmed as issued.

/S/ Kenneth Wm. Thornicroft

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal