

Citation: K Trans Worldwide Logistics Ltd.
2025 BCEST 25

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

K Trans Worldwide Logistics Ltd.

- of a Determination issued by -

The Director of Employment Standards

PANEL: Warren Insell
SUBMISSIONS: Taowen Zhong, on behalf of K Trans Worldwide Logistics Ltd.
FILE NUMBER: 2024/119
DATE OF DECISION: February 20, 2025

DECISION

OVERVIEW OR INTRODUCTION

1. The Appellant, K Trans Worldwide Logistics Ltd. (“**K Trans**”), is represented by Taowen Zhong. K Trans appeals a determination (the “**Determination**”) made by a delegate of the Director of Employment Standards (the “**Director**”) on August 6, 2024. The Director had determined that K Trans was liable for administrative penalties and wages (vacation pay and compensation for length of service) which were not paid to Dong Ping Huang after his employment was terminated.
2. K Trans checked off a box on the appeal form to indicate that the appeal was based on the ground that the Director had failed to observe the principles of natural justice in making the Determination.
3. In filing their appeal, K Trans takes the same position and relies on the same evidence that was before the Director at the time of the Determination. K Trans disagrees with the Director’s finding that Mr. Huang was terminated and argues that Mr. Huang had voluntarily resigned without notice. K Trans provided no new evidence for consideration in the appeal.
4. For the reasons that follow, I dismiss the appeal without seeking submissions from other parties, pursuant to section 114(1)(f) of the *Employment Standards Act (ESA)*, because there is no reasonable prospect that the appeal will succeed.

ISSUES

5. Did the Director fail to observe the principles of natural justice in making the Determination?
6. Did the Director make an error of fact, that constitutes an error of law, in concluding that Mr. Huang was terminated?

ANALYSIS

Did the Director fail to observe the principles of natural justice?

7. Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them, the right to present their evidence, and the right to be heard by an independent decision maker: *607730 B.C. Ltd. (English Inn & Resort) (Re)*, BC EST # D055/05.
8. K Trans did not adduce evidence or make any submissions relating to the principles of natural justice or to indicate that the Director was procedurally unfair. A party alleging a breach of natural justice must provide some evidence in support of that allegation: *Dusty Investments Inc. d.b.a Honda North*, BC EST # D043/99.
9. I found no evidence in the section 112(5) record or the Determination that would support a finding that the Director had failed to observe the principles of natural justice. K Trans was informed of the complaint against them, able to provide evidence and submissions that were considered by the

Director, and given an opportunity to respond to the Director's investigative findings before the Determination was issued.

10. I found no evidence to indicate bias on the part of the Director.
11. An unfavourable finding from the Director does not, on its own, amount to a breach of procedural fairness or the principles of natural justice.
12. I find that there is no basis for challenging the Determination on natural justice grounds.

Did the Director make an error of fact, that constitutes an error of law, in concluding that Mr. Huang was terminated?

13. K Trans reargues the merits of the case and disagrees with the Director's findings of fact. The Tribunal does not have jurisdiction to reweigh or correct findings of fact made by the Director in a Determination, except in limited circumstances. In *Angela Zavediuk (Re)*, 2024 BCEST 79, the Tribunal aptly describes those limited circumstances:

66. The appellate powers of the Tribunal are set out in section 112(1) of the *ESA*, and none of them permit the Tribunal to re-weigh, or to "correct," a finding of fact made by a delegate in a determination, except in the limited circumstances where the delegate's error regarding the facts constitutes an error of law. As has often been stated by the Tribunal, an error of fact does not amount to an error of law except in rare circumstances where it reveals what the authorities refer to as palpable and overriding error. A decision by the Tribunal that there has been a palpable and overriding error presupposes a finding that a factual conclusion of a delegate, or an inference drawn from that factual conclusion, is so unsupported by the evidentiary record that there is no rational basis for the finding that was made, and so it is perverse or inexplicable. Put another way, a party will only succeed in challenging a delegate's finding of fact if they establishes that no reasonable person, acting judicially and properly instructed as to the relevant law, could have reached the conclusion set out in the determination[...]

14. The salient issue before the Director, and the focal point of K Trans' submissions, was whether Mr. Huang had voluntarily quit or had his employment terminated. K Trans and Mr. Huang provided the Director with conflicting evidence.
15. The Director correctly relied on the test established in *Burnaby Select Taxi Ltd. (Re)*, BC EST #091/96, for determining whether an employee had quit or not and stated:

There are two conflicting accounts before me of what occurred when the Complainant spoke with Ms. Zhong at work on the morning of February 15, 2023; there is also evidence before me that phone calls between the parties occurred that evening. In my view, this evidence is more consistent with the Complainant's version of the events of that day, and the Employer appears to be unable to speak to this evidence or explain how it fits in with its own version of events. In the absence of any explanation from the Employer about why Ms. Zhong would have talked on the phone to the Complainant,

outside of business hours, after he had apparently already voluntarily ended his employment, I prefer the Complainant's evidence and accounting of the events of that day.

As such, I do not find that the Employer has provided sufficient facts to conclude that the Complainant took any objective act consistent with voluntarily ending his employment. It may have shown, by the evidence of the Complainant's co-workers, that he formed a subjective intention to quit; however, the test in *Burnaby Select Taxi* requires an employer to prove both. As the Employer has not done so, I do not find that the Employer has met its onus under s. 63 of the Act to show that the Complainant was the one who terminated his own employment.

16. The Director reasonably concluded, based on their weighing of evidence, that Mr. Huang was terminated. As a result, Mr. Huang was entitled to vacation pay and compensation for length of service.
17. In *Angela Zavediuk (above)* the Tribunal held that, absent a palpable and overriding error, the Director's findings of fact cannot be interfered with. I find that the Director's conclusions on the relevant matters were supported in evidence.
18. Accordingly, I find that the Director did not make an error of fact that constitutes an error of law in concluding that Mr. Huang was terminated.

CONCLUSION

19. I find that there is no reasonable prospect that the appeal will succeed. I dismiss the appeal pursuant to section 114(1)(f) of the *ESA*.

ORDER

20. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination dated August 6, 2024.

/S/ Warren Insell

Warren Insell
Member
Employment Standards Tribunal