

Citation: BC Taco Restaurant Group Ltd.
2025 BCEST 134

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

BC Taco Restaurant Group Ltd.

- of a Determination issued by -

The Director of Employment Standards

PANEL: Alysha Bennett

SUBMISSIONS: Carlos de Ibarrola, on behalf of BC Taco Restaurant Group Ltd.
Dale R. North, legal counsel for Diego Diaz Gracian
Jason Wang, delegate of the Director of Employment Standards

FILE NUMBER: 2025/024.ESA.AP

DATE OF DECISION: November 6, 2025

DECISION

OVERVIEW

1. This is an appeal filed by BC Taco Restaurant Group Ltd. (“**BC Taco**”) of a determination issued by a delegate (“**Adjudicating Delegate**”) of the Director of Employment Standards (“**Director**”) on August 29, 2024 (“**Determination**”).
2. BC Taco operates a food truck in Port Moody, British Columbia. Diego Diaz Gracian (“Mr. Diaz”) was an employee of BC Taco from September 8, 2019, to January 16, 2023.
3. In January of 2023, Mr. Diaz a filed a complaint under section 74 of the *Employment Standards Act (ESA)*, alleging that BC Taco contravened the *ESA* by failing to pay him all of the wages and gratuities that he was owed, and by requiring him to pay for business costs incurred by BC Taco.
4. A delegate appointed by the Director to investigate the complaint (“**Investigating Delegate**”) requested evidence and submissions from the involved parties. The Investigating Delegate then prepared an investigation report summarizing the evidence and arguments presented by the parties during the course of the investigation (“**Investigation Report**”).
5. On March 26, 2024, the Investigation Report was provided to BC Taco and Mr. Diaz, and each party had the opportunity to review it. The parties were specifically requested to review the documents in the Investigation Report carefully, and to indicate if it contained any errors or required clarification. Both parties responded to the Investigation Report.
6. The Investigation Report and the parties’ responses were then submitted to the Adjudicating Delegate, who reviewed and weighed the evidence, and issued the Determination. Among other things, the Adjudicating Delegate found that Mr. Diaz did not meet the definition of “manager” under section 1 of the *Employment Standards Regulation (ESR)*, and was therefore entitled to certain protections afforded to employees under the *ESA*.
7. As a result, the Determination held that BC Taco contravened the *ESA* in respect of the employment of Mr. Diaz. BC Taco was ordered to pay Mr. Diaz outstanding wages, overtime, statutory holiday pay, vacation pay, business costs, and accrued interest. The Adjudicating Delegate also levied three administrative penalties against BC Taco.
8. BC Taco appeals the Determination pursuant to section 112(1) of the *ESA*, which sets out the three statutory grounds of appeal. An appeal may only proceed on these limited grounds, which include (1) an error of law, (2) a failure to observe the principles of natural justice, and (3) the emergence of new evidence that was unavailable at the time of the determination.
9. For the reasons below, I conclude that BC Taco has not discharged its burden of establishing any of these statutory grounds of appeal.
10. I therefore confirm the Determination pursuant to section 115(1)(a) of the *ESA*.

ISSUES

11. I have reviewed BC Taco’s submissions, and find the issues raised in this appeal are as follows:

1. Has new evidence become available that was not available at the time the Determination was made?
2. Did the Director fail to consider the “advance payroll records” in the Determination?
3. Did the Director commit an error of law in finding that Mr. Diaz was not a manager?

ISSUE 1 – Has new evidence become available that was not available at the time the Determination was made?

12. BC Taco appeals the Determination on the basis that new evidence has become available that was not available at the time the Determination was made.
13. The Tribunal retains the discretion to accept or refuse new evidence, and has adopted a notably strict stance regarding the exercise of this discretion. In *Bruce Davies and others, Directors or Officers of Merilus Technologies Inc.*, BCEST # D171/03 (2003 CanLII 89192) (“**Bruce Davies**”), the Tribunal outlined the criteria for accepting new evidence on appeal:
 - a. the evidence could not reasonably have been discovered and presented to the Director during the investigation or adjudication of the complaint;
 - b. the evidence must be relevant to a material issue from the complaint;
 - c. the evidence must be credible in the sense that it is reasonably capable of belief; and
 - d. the evidence must have high potential probative value in the sense that if believed it could make a difference and lead to a different conclusion in the Determination.
14. These requirements are conjunctive. The burden rests with BC Taco to demonstrate that each of the requirements are satisfied with respect to the evidence it seeks to have admitted in this appeal.
15. The “new” evidence submitted by BC Taco consists of four written statements—each signed by current or former BC Taco employees—and three screenshots of text messages from Mr. Diaz.
16. Three of the statements use nearly identical language and appear to be pro forma statements that the former BC Taco employees were asked to sign. All the statements were signed between September 8 and 9, 2024. The statements contain assertions regarding Mr. Diaz’s role at BC Taco, evidently intended to support the claim that Mr. Diaz met the definition of “manager” under the *ESR*. For example, the employees stated that Mr. Diaz interviewed and hired them, provided their work instructions, supervised them, and scheduled their work. Each statement ends with the identical sentence: “I confirm that Diego Diaz was my manager and the principal contact I had with management.”
17. The fourth statement is from a manager of Rocky Point Spirits Inc., an associated employer of BC Taco. In this statement, the manager asserted that Mr. Diaz was the effective Operations Manager of BC Taco. The manager noted that he and Mr. Diaz had similar duties, then proceeded to list a number of these duties, including hiring, terminating, scheduling, and purchasing. The manager concludes his statement with allegations concerning Mr. Diaz, which I will not repeat in this decision as they are not relevant to the issues under appeal.
18. The text messages appear to be conversations between Mr. Diaz and a supplier. One of the screenshots is dated September 6, 2019, one is dated January 3, 2023, and one is undated. In

the text messages, Mr. Diaz appears to be submitting orders to the supplier. In the screenshot dated September 6, 2019, Mr. Diaz mentions that he is the manager of BC Taco.

19. With respect to the first element of the *Bruce Davies* test, I find that BC Taco has failed to discharge its burden of establishing that the evidence could not reasonably have been discovered and presented to the Director during the investigation or adjudication of the complaint.
20. In its reply submissions, BC Taco concedes that the “new” evidence was readily available, but states that it faced challenges in obtaining it. As to the statements, BC Taco says that these were collected post-determination due to the unavailability of witnesses during the investigation, as some employees had left BC Taco’s service or were reluctant to provide statements without the assurance of confidentiality. As to the text messages, BC Taco says that these were stored on a company device not accessed during the investigation due to an oversight in identifying relevant devices.
21. BC Taco asserts that the Tribunal has accepted new evidence in similar circumstances where reasonable expectations for delay exist. In support of this claim, BC Taco references three cases. However, upon review, these cases, as well as numerous other cases cited throughout BC Taco’s reply submissions, either do not exist, or do not support the proposition for which they were cited. This raises serious concerns about the reliability of the sources and suggests the possibility of artificial intelligence (“AI”) hallucinations—a phenomenon where generative AI tools produce plausible-sounding but entirely fabricated legal citations or arguments.
22. In *Zhang v. Chen*, 2024 BCSC 285, the Supreme Court of British Columbia addressed the submission of fictitious case law generated by ChatGPT and emphasized the obligation on a party to verify AI outputs included in their submission. In *Ren v. Area 09*, 2025 BCPAAB 20251941 (CanLII), a self-represented litigant submitted fabricated case law in support of a property valuation appeal. The Property Assessment Appeal Board found the citations to be false and attributed them to likely AI hallucinations, noting the significant time and resources wasted in verifying the non-existent authorities.
23. In the context of this appeal, reliance on fabricated or misrepresented authorities undermines the credibility of the submission. Parties are reminded that while AI tools can be helpful, they must be used responsibly, with all outputs subject to rigorous human verification.
24. In any event, I am not persuaded by BC Taco’s argument. The Tribunal has consistently stated that an employer cannot lie in the weeds, fail to properly participate in an investigation, and seek to adduce evidence on appeal which should have been presented to the investigating delegate during the investigation: *Tri-West Tractor*, BC EST # D268/96 (1996 CanLII 20965). If BC Taco did, in fact, face challenges in obtaining the evidence it now seeks to adduce on appeal, it was incumbent on BC Taco to make those challenges known to the Investigating Delegate.
25. The time and place to submit information is during the investigation of the complaint and prior to the issuance of a determination. The jurisprudence is clear that the introduction of new evidence at the appeal stage, that could and should have been introduced previously at the investigation or adjudication stage, will generally result in the dismissal of the appeal.
26. I find that the statements and the text messages were available during the investigation and adjudication of the complaint and ought to have been submitted at that time. As a result, BC Taco has not met its burden to have the “new” evidence considered.

27. Although I have found that BC Taco's appeal fails based on the first element of the *Bruce Davies* test, and therefore it is unnecessary to review the remaining elements, I further find that the proposed new evidence lacks high probative value. Even if this evidence was admitted, I am not convinced that it establishes Mr. Diaz as a manager as that term is defined in the *ESR*.
28. As to the statements, I agree with Mr. Diaz's counsel that the fact employees of BC Taco or its affiliated company may have observed Mr. Diaz appearing to hire or fire other employees, place purchase orders, or set schedules does not mean that Mr. Diaz was acting as a manager.
29. In the Determination, the Adjudicating Delegate considered Mr. Diaz's involvement in each of these duties. The Adjudicating Delegate acknowledged that Mr. Diaz was sometimes involved in hiring and firing decisions, but concluded that this was a rare occurrence. The Adjudicating Delegate also acknowledged that Mr. Diaz placed purchase orders, but concluded that these decisions were subject to approval or made at the direction of BC Taco. Finally, the Adjudicating Delegate acknowledged that Mr. Diaz was involved in preparing schedules, but concluded that the ultimate authority and responsibility for approving or altering the schedule rested with BC Taco.
30. As to the text messages, I find that these too have limited probative value. I am not convinced that a single text message where Mr. Diaz referred to himself as a manager, without any additional context, would make a difference and lead to a different conclusion in the Determination.
31. I find that the "new" evidence in this appeal falls short of the kind of clear evidence that would be sufficient to show Mr. Diaz's primary employment duties consisted of supervising and/or directing other employees.
32. Accordingly, I find BC Taco's submissions do not meet the requirements for new evidence, and this aspect of the appeal cannot succeed.

ISSUE 2 – Did the Director fail to consider the advance payroll vouchers?

33. On its Appeal Form, BC Taco only selected the new evidence ground of appeal. However, in its submissions, BC Taco made a note that the Investigating Delegate "failed to consider the advance payroll vouchers that Mr. Diaz received from [BC Taco]." While it is not clear based on its submissions, presumably, BC Taco believes that the amounts indicated on the advance payroll vouchers ought to have been deducted from the total unpaid wages found payable in the Determination.
34. The Tribunal is permitted to take a broad view of an appeal, and does not "mechanically adjudicate an appeal based solely on the particular 'box' that an appellant has checked off": *Triple S Transmission Inc.*, BC EST # D141/03 (2003 CanLII 89310).
35. A breach of natural justice can occur when a delegate fails to consider relevant evidence. Such a failure can also be characterized as an error of law. Therefore, while not specifically indicated in the Appeal Form, I have considered the breach of natural justice and error of law grounds of appeal as well.
36. The Tribunal has adopted a cautious approach when considering whether to intervene in a determination on the basis that relevant evidence was not considered by a delegate. A delegate's reasons do not need to recite all the evidence considered, nor is there an obligation to explain

every single finding of fact and conclusion. Instead, reasons need only provide enough detail to allow parties to understand the basis of the conclusions reached. As such, the Tribunal is generally reluctant to find that a delegate failed to consider evidence based solely on the fact that it was not expressly mentioned in the determination: *Regent Christian Academy Society*, BC EST # D011/14 (2014 CanLII 149853).

37. Absent good cause, the Tribunal will assume that the delegate considered and weighed all the evidence and found every fact it was open to find based on that evidence that was necessary to support the conclusions reached: *Re Budget Rent-a-Car of Victoria Ltd.*, BC EST # D021/12 (2012 CanLII 151005).
38. Other than a bald assertion that the Investigating Delegate failed to consider the advance payroll vouchers, BC Taco has not provided any evidence in support of this argument.
39. In any event, the Investigation Report did address the advance payroll vouchers. The Investigating Delegate provided a summary of BC Taco's evidence on certain "loans" or "cash advances" that Mr. Diaz purportedly received throughout his employment, and incorporated copies of the advance payroll vouchers in the Investigation Report.
40. I accept the Adjudicating Delegate's statement in his Reasons for the Determination that he reviewed all the evidence provided by the parties in the Investigation Report, and only made reference to the evidence as necessary to reach the required findings and to apply the relevant legislation.
41. BC Taco has not persuaded me that the Investigating Delegate or the Adjudicating Delegate failed to consider the advance payroll vouchers in the Determination.
42. Moreover, the Tribunal will not presume a delegate ignored or failed to consider evidence unless it can be objectively shown that explicitly considering such evidence in the determination was legally necessary to reach the ultimate conclusion: *Euro Asia Transload Inc. (Re)*, 2022 BCEST 72 at para. 62.
43. In my view, it was not legally necessary for the advance payroll vouchers to be explicitly considered in the Determination. Where an employer gives an employee an advance on wages, the employer is not permitted to unilaterally withhold that amount from future wages of the employee, unless the employee has provided a written assignment of wages in advance. This is consistent with section 21(1) and section 22(4) of the *ESA*.
44. The Tribunal has held that assignments permitted by section 22(4) of the *ESA* must be clear and unequivocal. There must be no doubt that it is a written assignment of wages to meet an intended credit obligation: *Clements and Clements*, BC EST # D018/10 (2010 CanLII 151123). In my view, the advance payroll vouchers do not meet these requirements, and therefore do not constitute such an assignment.
45. As a result, I am not convinced that the Adjudicating Delegate committed any error of law or breached any principle of natural justice in respect of the advance payroll vouchers.

ISSUE 3 – Did the Director commit an error of law in finding Mr. Diaz was not a manager?

46. In its reply submissions, BC Taco raised, for the first time, that the Adjudicating Delegate committed errors of fact and law in finding that Mr. Diaz was not a manager. BC Taco also raised additional policy considerations.
47. In *Renshaw Travel*, BC EST #D085/08 (2008 CanLII 93128), the Tribunal held that it was a contravention of the appeal provisions of the *ESA*, the Tribunal's Rules of Practice and Procedure, and the objectives of the *ESA* for a party to raise a new issue on appeal for the first time in its reply submissions. The Tribunal found:
- In the ordinary course, then, an appellant's raising a new issue on appeal for the first time in its submission in reply must tend to operate in contravention of the appeal provisions of the *Act*, the Tribunal's Rules of Practice and Procedure, as well as the twin goals of fair treatment of all parties involved in the process, and the efficient resolution of disputes. A reply submission is meant to address arguments raised in the submissions of respondents delivered in response to the materials filed by an appellant in support of its appeal. It is not meant to raise new issues which the respondents have not had an opportunity to address in their submissions, and which were not identified as issues on appeal in the material an appellant has filed with the Tribunal in order to perfect its appeal. (para. 53)
48. Not only did BC Taco fail to indicate the “error of law” ground of appeal on its Appeal Form, but its accompanying submissions made no mention of the Adjudicating Delegate making any such errors. Since BC Taco did not raise the error of law ground of appeal until its reply submissions, neither the Director nor Mr. Diaz were able to provide a response to that part of the appeal. As a result, I need not address BC Taco's arguments asserting that the Director committed errors of fact and law.
49. Although I am not required to address these new arguments, I find that such arguments have no reasonable prospect of success. I will briefly comment on each of these arguments below.
50. BC Taco first submits that the Adjudicating Delegate committed an error of fact in concluding that Mr. Diaz's supervisory duties were incidental, despite evidence that he had full scheduling authority, hired and terminated employees, managed budgets, and handled vendor relations. BC Taco argues that this finding ignored the small-scale nature of the food truck, where managers perform operational tasks.
51. The *ESA* does not provide for an appeal based on errors of fact. Findings of fact are reviewable as errors of law only if they were based on no evidence, or a view of the facts which could not reasonably be entertained. Otherwise, the Tribunal has no jurisdiction to consider appeals that seek to have the Tribunal reach a different factual conclusion than was made by the Director: *Britco Structures Ltd.*, BC EST # D260/03 (2003 CanLII 89224).
52. I am not satisfied that the Adjudicating Delegate acted on no evidence, or on a view of the facts which could not reasonably be entertained. The Adjudicating Delegate provided clear and cogent reasons for his finding that Mr. Diaz was not a manager as defined by section 1 of the *ESR*. The Adjudicating Delegate weighed the evidence of both parties and provided comprehensive reasons for why he preferred Mr. Diaz's evidence over BC Taco's evidence. The Adjudicating Delegate

found that, taken together, the evidence demonstrated that Mr. Diaz did not have the authority to make any significant business decisions, such as recruiting and terminating employees, managing business resources, or managing human resources.

53. Contrary to BC Taco's assertions, the Adjudicating Delegate gave due consideration to the small-scale nature of the food truck. The Adjudicating Delegate determined that, due to the operational requirements inherent in managing a food truck, it was improbable that Mr. Diaz spent most of his time supervising staff. Instead, the Adjudicating Delegate concluded that the majority of Mr. Diaz's duties likely consisted of operational responsibilities.
54. BC Taco also submits that the Adjudicating Delegate committed an error of law. BC Taco's argument is that "The Director misapplied the managerial exemption by requiring independent authority without oversight, despite [Mr. Diaz]'s autonomous scheduling and vendor management. Tribunal jurisprudence recognizes that managerial roles in small businesses often involve delegated or autonomous authority." BC Taco cites four cases purportedly in support of this argument. Again, these cases, appear to be AI hallucinations. As a result, they were of no value in my decision.
55. In any event, I am not convinced that the Adjudicating Delegate committed an error of law in finding that Mr. Diaz was not a manager. Whether an employee has independent decision-making authority is directly relevant to the determination of whether an employee is a "manager" under the *ESR*: see for example, *J.P. Metal Masters 2000 Inc., Re*, BC EST #RD137/05 (2005 CanLII 93836).
56. After weighing the evidence, the Adjudicating Delegate determined that Mr. Diaz did not have the ultimate authority to schedule employees, or to place orders with vendors. Rather, the Adjudicating Delegate found that Mr. Diaz's involvement in these tasks was administrative in nature, as opposed to an exercise of managerial autonomy or discretion.
57. Given the above, I am not convinced that the Adjudicating Delegate misinterpreted or misapplied the managerial exemption under the *ESR*. While I appreciate the role of a "manager" may be somewhat different in a small business, Mr. Diaz did not meet the exemption of a manager as defined in the *ESR*. I find no reason to change the Determination.

ORDER

58. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination dated August 29, 2024, together with whatever interest that has accrued pursuant to section 88 of the *ESA*.

/S/Alysha Bennett

Alysha Bennett
Member
Employment Standards Tribunal