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Phantom Mfg. (Int'l) Ltd., 2026 BCEST 56

Employment Standards
TRIBUNAL

Citation: Phantom Mfg. (Int'l) Ltd.
2026 BCEST 56

EMPLOYMENT STANDARDS TRIBUNAL

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

\- by -

Phantom Mfg. (Int'l) Ltd.

\- of a Determination issued by -

The Director of Employment Standards

PANEL:	Jeremy Bryant
SUBMISSIONS:	C. Esther De Wolde, on behalf of Phantom Mfg. (Int'l) Ltd.
FILE NUMBER:	2025/172.ESA.AP
DATE OF DECISION:	July 8, 2026

DECISION

OVERVIEW

1. Phantom Mfg. (Int'l) Ltd. carrying on business as Phantom Screens ("**Phantom**") has appealed a determination by a delegate ("**Delegate**") of the Director of Employment Standards ("**Director**") which concluded Phantom had failed to comply with section 58 of the Employment Standards Act (**ESA**) because they paid their employee Eileen Hopkins 4% vacation pay during her fifth year of employment when her proper entitlement was 6%.

2. Phantom was ordered to pay Ms. Hopkins unpaid annual vacation pay with interest and was issued a mandatory $500.00 penalty.

3. Phantom appeals the determination to the Employment Standards Tribunal ("**Tribunal**"), arguing the Director erred in their interpretation of section 58(1) of the ESA which provides:

> **Vacation pay**
>
> 58 (1) An employer must pay an employee the following amount of vacation pay:
>
> (a) after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the vacation pay;
>
> (b) after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay.

4. I have dismissed Phantom's appeal pursuant to section 114(1)(f) of the ESA as it has no reasonable prospect of success.

ANALYSIS

5. The appeal form submitted to the Tribunal on behalf of Phantom indicates they are appealing on all three grounds under section 112(1) of the ESA: (a) the Director erred in law, (b) the Director failed to observe the principles of natural justice in making the Determination, and (c) evidence has become available that was not available at the time the Determination was being made.

6. I have reviewed the Determination, Phantom's submissions, and the evidence submitted during the investigation and adjudication of Ms. Hopkins' employment standards complaint and do not find any reasonable prospect of success on appeal based on any of the section 112(1) grounds.

7. Phantom's submissions were limited to an alleged error in law by the Director in the interpretation of the vacation provisions of the ESA. They argue the language of section 58(1)(b) "after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay", must be read to entitle Ms. Hopkins to 6% vacation pay only after she completed her fifth year of employment, in other words when she commenced her sixth year of employment.

8. The Tribunal assesses the "error of law" ground of appeal under the criteria set out 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 confirms a misinterpretation or misapplication of a section of the *ESA* may constitute an error of law.

9. The Delegate's reasons in the determination, included the following explanation why vacation pay should have been calculated at 6% of Ms. Hopkin's gross wages earned during her fifth year of employment:

> Per section 58 of the [ESA], an employer must pay an employee vacation pay at a rate of at least 4% after five (5) calendar days of employment or at least 6% after five (5) consecutive years of employment. Vacation pay for an employee who completes five (5) consecutive years of employment is calculated as 6% of the gross wages earned by the employee during their fifth year of employment, and onwards.
>
> Vacation pay is earned one (1) year and payable the next. For this reason, vacation pay earned in a year is payable up to the anniversary date of the following year, less a day…
>
> [Ms. Hopkins] has been employed by [Phantom] from March 12, 2018, to present. Using an anniversary date of [Ms. Hopkin's] first date of employment, as confirmed by [Phantom], [Ms. Hopkins] has been employed for seven (7) consecutive years. As such, following the completion of [Ms. Hopkin's] fifth year of employment (March 12, 2022 to March 11, 2023), [Ms. Hopkins] became entitled to 6% vacation pay on all wages earned that year and thereafter. However, both parties confirm [Ms. Hopkins] was paid vacation pay at a rate of 4% up until March 11, 2023. It was only at the start of her sixth year of employment that [Ms. Hopkins] began to accrue vacation pay at a rate of 6% as of March 12, 2023 and onwards. Taken with the above, I find [Ms. Hopkins] is entitled to a top-up of 2% vacation pay on all the gross wages earned during her fifth year of employment (March 12, 2022 to March 11, 2023).

10. The Delegate did not misinterpret or misapply section 58(1) of the ESA in her determination.

11. While the language of section 58(1) may be somewhat confusing if the words "after 5 consecutive years of employment, at least 6% of the employee's total wages" are read in isolation, when those words are read harmoniously with the subsequent words, "during the year of employment entitling the employee to the vacation pay" and consistently with the scheme of the Annual Vacation provisions in Part 7 of the ESA which provide that vacation pay is earned in one year and payable in the next, they clearly require vacation pay to be calculated at 6% for the fifth year of employment which the employee then becomes entitled to after their fifth year of employment, i.e. at the commencement of their sixth year of employment.

12. As the Supreme Court of Canada directed in *Rizzo & Rizzo Shoes Ltd.*, 1998 CanLII 837 (SCC) (*"**Rizzo**"*), a case Phantom cites in their submissions, the modern doctrine of statutory interpretation requires the words of an Act be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

13. Phantom's interpretation is inconsistent with *Rizzo* because, while it reads the statutory language in its ordinary sense, it fails to consider the rest of the language of section 58(1)(b) (the entire context) and the scheme of Part 7 of the ESA.

14. Phantom submits, the "Employment Standards Branch has, for decades, interpreted section 58(1) to mean that the increased vacation entitlement [I assume they are referring to the increased

percentage of vacation pay] applies after the completion of five years of service”. Phantom has provided no evidence to the Tribunal to support this assertion.

15. The section 112(5) record provided to the Tribunal by the Director reveals Phantom referenced the Employment Standards Branch website during the investigation and adjudication of Ms. Hopkins’ employment standards complaint, however, the passage they referenced does not support their interpretation. That passage speaks to a one-time 2% vacation pay adjustment on the first paycheque after the fifth year of employment for an employee who agrees in writing to receive their vacation pay on every scheduled payday. Notably the passage is clear that the one-time 2% adjustment is “based on total gross earnings during the fifth year of employment”, in other words confirming that vacation pay during the fifth year must be calculated at 6% of gross earnings.

16. The Tribunal has definitively ruled on this issue, including in a Noteworthy Decision *Director of Employment Standards (Re),* 2019 BCEST 10 (CanLII) (“**Vacation Pay Clarification Decision**”), at paragraphs 24-27:

> We are of the view that while the *ESA* could be worded more clearly to avoid the difficulties presented by these sections, the Tribunal’s longstanding interpretation of the provisions must be both reiterated and upheld in order to provide for legal certainty. (see, for example, *Markin*, BC EST # D228/98)
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> In *Intercity Appraisals Ltd.*, BC EST # D151/97, a reconsideration decision of BC EST # D245/96, the Tribunal said as follows:
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>> While there [are] elements of ambiguity in the law, the most logical interpretation of Sections 57 and 58 of the *Act* leads to a conclusion that vacation pay is based on the previous year’s earnings. The law entitles an employee to three weeks of vacation after the completion of the fifth year of employment, i.e. after the employee’s fifth anniversary of employment. Section 58(1)(b) states that the six per cent payment is based on the employee’s wages “during the year of employment entitling the employee to the vacation pay.” In other words, the basis for calculating entitlement to vacation pay is the previous year of employment. Sections 57 and 58 establish reliance on the previous year’s wages to calculate vacation pay consistently. An employee who completes one year of employment is entitled to four per cent vacation pay based on earnings during the first year of employment, for instance. In subsequent years, the four per cent is based on earning the year before. At the fifth anniversary, the entitlement becomes six per cent of the earnings the previous, i.e., the fifth year. . . .
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> Additionally, in *Metropolitan Fine Printers Inc.*, BC EST # RD022/13, a reconsideration decision confirming BC EST # D113/12, the Tribunal noted that the combined effect of sections 57 and 58 is that
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>> … a newly hired employee is entitled to *at least* two weeks’ unpaid leave, to be taken in their second year of employment. In addition, at the start of the vacation leave, *at least* 4% of their *prior year’s earnings* must be paid to the employee as vacation pay. These entitlements increase to 3 weeks’ leave and 6% vacation pay after 5 consecutive years of employment.

> The Panel finds that this interpretation, which the Tribunal has endorsed on many occasions, must be reaffirmed...

17. The Tribunal lists Noteworthy Decisions, including the Vacation Pay Clarification Decision, on its website for employers and employees to access. Parties should review such reliable information on the interpretation of the ESA from the Tribunal or Director. Unfortunately, in their appeal submissions, Phantom relied on irrelevant and unreliable information with respect to the interpretation and application of section 58 of the ESA.

18. Phantom relied on an "independent survey" of 13 BC employers who they say had the same understanding that vacation pay at 6% started accruing in the sixth year of employment. While they did not provide this survey, popular opinion evidence clearly cannot have any bearing on the interpretation of the ESA.

19. Phantom also relied on an online vacation pay calculator which appears to be from Employment and Social Development Canada's Labour Program. As they note, this is a federal tool not a BC specific one. As such it has no relevance to the interpretation of the *ESA* as federally regulated employment standards are governed by different legislation, the *Canada Labour Code.*

20. Finally, Phantom relied on large language model artificial intelligence ("**AI**"), submitting:

> Even widely recognized AI tools, including ChatGPT and other reputable language models, interpret the provincial vacation policy law in a manner consistent with how employers have traditionally applied it. When asked to explain or calculate vacation pay, these systems rely on the plain wording of the legislation and the principles reflected in government-published materials—typically calculating vacation pay as a percentage of total wages earned during the qualifying period.

21. Phantom's submission highlights the risks of using AI to interpret the ESA. As the Tribunal member in *BC Taco Restaurant Group Ltd.*, 2025 BCEST 134 (CanLII) noted, "[p]arties are reminded that while AI tools can be helpful, they must be used responsibly, with all outputs subject to rigorous human verification". Here, the AI tools provided incorrect information.

CONCLUSION

22. The Director did not err in law in their interpretation of section 58(1) of the ESA. The Appeal has no reasonable prospect of succeeding and it is dismissed.

ORDER

23. The appeal is dismissed pursuant to section 114(1)(f) of the ESA as it has no reasonable prospect of success.

24. Pursuant to section 115(1)(a) of the ESA, I order the Determination dated September 22, 2025, be confirmed together with any interest that has accrued under section 88 of the ESA.

/S/ Jeremy Bryant

Jeremy Bryant

Member
Employment Standards Tribunal