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Darren Bisson, 2025 BCEST 18

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Employment Standards TRIBUNAL

Citation: Darren Bisson
2025 BCEST 18

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EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Darren Bisson

- of a Determination issued by -

The Director of Employment Standards

PANEL:	Carol L. Roberts
SUBMISSIONS:	Darren Bisson, on his own behalf carrying on business as Williams Creek Lodge and Northern Pacific Fishing Adventures
FILE NUMBER:	2024/113
DATE OF DECISION:	February 4, 2025

DECISION

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (***ESA***), Darren Bisson carrying on business as Williams Creek Lodge and Northern Pacific Fishing Adventures ("**Bisson**") filed an appeal of a determination issued by a delegate (the "**Delegate**") of the Director of Employment Standards (the "**Director**") on July 29, 2024 (the "**Determination**").

2. On May 5, 2023, Devin Curtis ("**Curtis**") filed a complaint with the Director alleging that Bisson had contravened the *ESA* in failing to pay him wages, compensation for length of service, and for failing to reimburse him for business costs.

3. A delegate of the Director (the "**Investigator**") investigated the complaint, and on May 21, 2024, issued an Investigation Report (the "**Report**") which was provided to the parties for a response. The Delegate reviewed the information produced during the investigation, the Report, and the responses of the parties before issuing the Determination.

4. The Delegate determined that Bisson had contravened sections 17, 18, 40, 45, 46 and 58 of the *ESA* in failing to pay Curtis wages, overtime, annual vacation pay, and statutory holiday pay and ordered Bisson to pay a total amount of $70,392.42, representing wages and interest.

5. The Delegate also imposed eight $500 administrative penalties for the contraventions of the *ESA* for a total amount owing of $74,392.42.

6. Bisson contends that the Director erred in law and failed to observe the principles of natural justice in making the Determination.

7. Section 114(1) of the *ESA* provides that the Tribunal may dismiss all or part of an appeal without seeking submissions from the other parties or the Director if it decides that the appeal does not meet certain criteria. After reviewing the appeal submissions and the section 112(5) record, I found it unnecessary to seek submissions from the Director or Curtis.

8. This decision is based on the section 112(5) record that was before the Delegate at the time the Determination was made, the appeal submissions, and the Reasons for the Determination.

FACTS

9. Bisson is the sole proprietor of Willow Creek and Northern Pacific Fishing Adventures, a lodge and outdoor adventure business registered in British Columbia. Curtis worked as a chef at the lodge.

10. At issue before the Delegate was whether Curtis was an employee or an independent contractor.

11. Curtis contended that he was an employee while Bisson took the position that Curtis was an independent contractor.

12. The facts before the Delegate are as follows.

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13. Curtis said that he responded to an online advertisement for a chef, and that on July 4, 2022, Bisson emailed Curtis the terms of employment, including a wage rate and duties. Curtis relocated as part of the agreement and began performing work on July 15, 2022. During his time with the business, Curtis was responsible for creating a three-course dinner for up to 16 people including two staff members. Curtis asserted that from the start of his employment until mid-October 2022, he worked almost every day, taking only five Mondays off in that period. From mid-October 2022, until November 26, 2022, he worked six days a week with a fluctuating day off. Curtis worked for another employer from November 27 to December 10, 2022. From December 11, 2022, until the end of his employment, Curtis returned to a six day per week schedule with a fluctuating day off. Curtis asserted that he worked approximately 11 hours per day, and that he worked on statutory holidays if those days fell on his normal working schedule.

14. On April 23, 2023, the parties had a disagreement about outstanding wages. On May 18, 2023, Bisson asked Curtis to provide him with invoices for work performed, which Curtis declined to do because he had never previously done so. There was no further communication between the parties.

15. Curtis advised the Investigator that Bisson had provided him with a bank card to use to purchase groceries, but the card occasionally had insufficient funds and Curtis used his own money to buy groceries. Curtis said that although he gave Bisson receipts for those purchases, he was never reimbursed. Bisson asked Curtis to return the bank card on May 18, 2023. Curtis provided copies of his bank statements to support his claim for reimbursement.

16. Bisson said that he did not maintain any records of Curtis' employment because he was of the view that Curtis was an independent contractor. He further informed the Investigator that Curtis did not provide him with any invoices. Although Bisson stated that he paid Curtis by way of electronic transfers to Curtis' mother's account, he did not provide the Investigator with confirmation of any of those transactions.

17. Bisson contended that he had not sent Curtis the July 4, 2022, email with employment terms, alleging that Curtis had fabricated the email. Bisson also denied texting Curtis about wages owing. Bisson further denied the existence of a written employment agreement. Bisson did not respond to Curtis' evidence of his daily tasks and schedule although he was asked to do so by the Investigator.

18. Bisson did not respond to the Director's Demand for Employer Records and did not provide any documentation in support of his position that Curtis was an independent contractor.

19. Bisson's response to the Report consisted largely of a denial that Curtis was an employee and that the evidence submitted by Curtis was, in effect, falsified.

20. The Delegate considered the definition of 'employee' in the *ESA* and determined that, based on a consideration of the entire relationship between the parties, Bisson exercised a significant level of control and direction over Curtis' work, set the wage rate, provided all the material he used to perform that work, and bore the risk of loss and opportunity to profit typical of an employer. The Delegate also found that Curtis provided services normally performed by an employee.

21. The Delegate found Curtis' evidence, specifically the July 4, 2022, email, to be credible and reasonable. The Delegate noted that although Bisson asserted that the email was fraudulent, it discussed cooking services and originated from an account Bisson had access to.

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22. The Delegate determined that Curtis was an employee for the purposes of the *ESA*.

23. In the absence of any employer records, the Delegate found Curtis' evidence to be the best evidence. She assessed the nature of Curtis' position and the description of his duties and concluded that they were consistent with the duties that a chef working alone would perform. The Delegate determined Curtis' wage rate based on the rate of pay set out in the July 4, 2022, email. After determining that Curtis was not a manager as defined by the *Employment Standard Regulation* and thus excluded from overtime wage requirements, the Delegate calculated Curtis' overtime wages. She then calculated his statutory holiday and vacation pay wages based on these determinations.

24. Finally, the Delegate determined that while Curtis may have incurred costs purchasing groceries for Bisson, she found that, without detailed receipts, there was insufficient evidence to properly calculate the amount of those costs.

25. The Delegate determined that Curtis quit his employment and was not owed compensation for length of service.

ANALYSIS

26. Section 114(1) of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:

(a) the appeal is not within the jurisdiction of the tribunal;

(b) the appeal was not filed within the applicable time limit;

(c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;

(d) the appeal was made in bad faith or filed for an improper purpose or motive;

(e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;

(f) there is no reasonable prospect that the appeal will succeed;

(g) the substance of the appeal has been appropriately dealt with in another proceeding;

(h) one or more of the requirements of section 112 (2) have not been met.

27. Section 112(1) of the *ESA* provides that a person may appeal a determination on 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.

Argument

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28. Bisson argues, in essence, an allegation that the Determination is wrong, that Curtis was never an employee, and that Bisson does not owe Curtis any money.

29. Without specifying how the Delegate erred in law, Bisson contends that the evidence provided by Curtis was insufficient to establish that he was an employee rather than an independent contractor. Bisson says:

> In any court of law any of this type of evidence is extremely rarely accepted as valid authentic evidence in regards to what the evidence is and who it comes from, with zero witness statements or video audio recording of myself admitting they are truly authentic and accurate.
>
> …
>
> As any government agency that is held to the highest standards of honesty and integrity, must follow the rule of law completely and fully and by submitting this type of evidence against myself is also against the Canadian charter of rights and freedoms ad by a far margin not following the rule of law at all. [reproduced as written]

30. Attached to Bisson's appeal are copies of email correspondence he had with the Investigator.

31. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the determination on one of the statutory grounds. I am not persuaded that Bisson has met that burden.

32. Acknowledging that the majority of appellants do not have any formal legal training and, in essence, act as their own counsel, the Tribunal has taken a liberal view of the grounds of appeal. (see *Triple S Transmission*, BC EST # D141/03). I have addressed Bisson's arguments separately.

Failure to observe the principles of natural justice

33. Although Bisson argued as one of his grounds of appeal that the Director failed to observe the principles of natural justice, he provided no evidence or argument in support of this argument.

34. Natural justice is a procedural right which includes the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker.

35. Bisson was informed about the complaint and given the opportunity to respond. The record demonstrates that he did respond to the Investigator's inquiries even though his responses were threatening and non-responsive as to the information being sought. Bisson was also provided with a copy of the Report and given the opportunity to make further submissions in response to that report.

36. Despite being provided with links to the *ESA* and the *Employment Standards Regulation*, information about the role of the Director in complaint investigation and adjudication as well as information about the distinction between employees and independent contractors, Bisson continued to argue that Curtis' evidence was false or created by artificial intelligence.

37. I find no basis to conclude that Bisson was denied an opportunity to respond to the allegations and dismiss the appeal on this ground.

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Error of Law

38. The Tribunal has adopted the following definition of "error of law" set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam),* [1998] B.C.J. No. 2275 (B.C.C. A.):

> a) a misinterpretation or misapplication of a section of the Act;
>
> b) a misapplication of an applicable principle of general law;
>
> c) acting without any evidence;
>
> d) acting on a view of the facts which could not reasonably be entertained; and
>
> e) adopting a method of assessment which is wrong in principle.

39. In *Britco Structures Ltd*., BC EST # D260/03, the Tribunal held that findings of fact were 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.

40. Bisson asserts that the evidence before the Delegate was insufficient to establish that Curtis was an employee, repeating the position that he advanced before the Investigator. However, he has not argued, or established, that the Delegate misinterpreted the *ESA* or the *Employment Standards Regulation*, misapplied a principle of general law, acted without any evidence or acted on a view of the facts that could not be reasonably entertained.

41. Curtis submitted evidence that presumptively established he was hired by Bisson as a chef. The email of July 4, 2022, containing the offer to work for Northern Pacific Adventures was from an account that appeared to be controlled by Bisson, as it was the same email address Bisson used to respond to the Investigator. That email outlined Curtis' job duties, a rate of pay, and referenced Bisson's spouse's name.

42. Curtis also submitted screen shots of text messages with Bisson, some of which also referenced Bisson's spouse's name, financial difficulties Bisson was encountering, and dates money was sent to Curtis.

43. Bisson asserted, without providing any evidence, that the documentation was false.

44. Curtis' evidence of an employment contract and Bisson's failure to pay required a response from Bisson. In addition to simply denying the existence of an employment relationship or any financial obligation to Curtis, Bisson's responses referenced the *Canada Labour Code* (which has no application to Curtis' complaint) and threatened the Investigator.

45. On April 9, 2024, Bisson wrote:

> Be sure that what you have will stand in court of law in a defamation lawsuit against you and the person making false allegations. [reproduced as written]

46. On May 7, 2024, Bisson accused the Investigator of harassing him and asked him to provide a

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> …full staff list including your supervisor as well as his supervisor and so on so I can let my MLA know that I am being harassed for money by people claiming they are representing government of Canada. [reproduced as written]

47. I am not persuaded the Delegate erred in her decision that Curtis' evidence was the best available evidence or in her conclusion that Curtis was an employee.

48. Section 1 of the *ESA* defines "employee" to include a person "receiving or entitled to wages for work performed for another" and a person "an employer allows, directly or indirectly, to perform work normally performed by an employee."

49. As benefits-conferring legislation, the *ESA* is to be interpreted in a way that extends its protections to as many employees as possible. The Tribunal has consistently found that the definition of employee is to be broadly interpreted (see, for example, *Kelsy Trigg,* BC EST # D040/03, and *North Delta Real Hot Yoga Ltd. carrying on business as Bikram Yoga Delta*, BC EST # D026/12).

50. In *Cove Yachts (1979) Ltd.* (BC EST # D421/99) the Tribunal identified a number of factors relevant to the question of whether a person is an employee or independent contractor. Those factors included the language of the contract, the extent of control by the employer of the "what and how" of the work, the ownership of the means of performing the work (e.g. tools) the chance of profit/risk of loss, the right to delegate and the intention of the parties.

51. Despite being provided with information about the application of the *ESA*, Bisson failed to provide any evidence that rebutted Curtis' evidence.

52. Bisson also asserts that the company is an "aboriginal small family business" and that his "charter rights have been violated in many ways." I find these arguments without merit.

53. It appears Bisson is of the view that the Delegate audio recorded their conversations. I infer that Bisson has this view because of references in the Tribunal correspondence to the *ESA* section 112(5) "record."

54. Section 112(5) of the ESA provides that

> On receiving a copy of the request under subsection (2)(b) or amended request under subsection (4)(b), the director must provide the tribunal with the record that was before the director at the time the determination, or variation of it, was made, including any witness statement and document considered by the director.

55. The "record" in this context is simply the material that was before the Delegate at the time the Determination was made. There is no evidence the Investigator recorded any oral conversations between himself and Bisson, although he did make notes about those conversations.

56. Bisson also refers to "charter rights" without specifically identifying what those rights might be. However, even had Bisson articulated a Charter right, section 103(e) of the *ESA* which incorporates section 45(1) of the *Administrative Tribunals Act* provides that the Tribunal does not have jurisdiction over constitutional questions relating to the *Canadian Charter of Rights and Freedoms*.

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57. In the absence of any evidence or argument that there is any error in the Determination, I am not persuaded that there is a reasonable prospect that the appeal will succeed.

58. I dismiss the appeal.

ORDER

59. Pursuant to section 115(1)(a) of the *ESA*, the Determination, dated July 29, 2024, is confirmed in the amount of $74,392.42, together with whatever interest may have accrued since the date of issuance.

/S/ Carol L. Roberts

Carol L. Roberts
Member
Employment Standards Tribunal

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