

CANADA / JUDGMENT

Chao v. Hallmark Poultry Processors Ltd.

2025 BCSC 1781

COURT

Supreme Court of British Columbia

DECIDED

28 August 2025

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2025 BCSC 1781 Chao v. Hallmark Poultry Processors Ltd. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Chao v. Hallmark Poultry Processors Ltd., 2025 BCSC 1781 Date: 20250828 Docket: S237815 Registry: Vancouver Between: Kua Yung Chao Petitioner And Hallmark Poultry Processors Ltd. Respondent Before: The Honourable Justice A. Ross On judicial review from: A decision of the Employment Standards Tribunal, dated October 20, 2023 (Kua Yung Chao (Re), 2023 BCEST 90) Oral Reasons for Judgment In Chambers The Petitioner, appearing in person: K. Chao Counsel for the Respondent: G. Christie Counsel for the Employment Standards Tribunal: A.M. Vulimiri Counsel for the Director of Employment Standards: L.M. Courtenay Place and Date of Trial/Hearing: Vancouver, B.C. August 28, 2025 Place and Date of Judgment: Vancouver, B.C. August 28, 2025

Introduction

- [1] THE COURT: I am delivering my reasons orally for the sake of expediency. If any party requests a copy of the written reasons, I reserve the right to edit them for grammar and for syntax, and to provide further context. The result will not change.
- [2] Mr. Chao brings this petition for judicial review of a decision of the Employment Standards Tribunal that was issued on October 20, 2023. Mr. Chao had been an employee of Hallmark Poultry Processors Ltd. ("Hallmark") His employment was terminated on October 4, 2021. He then filed a complaint with the Employment Standards Branch. His initial complaint was not successful. He pursued the appellate procedures available under the Employment Standards Act, R.S.B.C. 1996, c. 113 [Act], but his appeal was not successful.
- [3] Ultimately, on October 20, 2023, a reconsideration panel, which is the final level of appeal within the Act, dismissed Mr. Chao's appeal. For the purposes of these reasons, I will refer to that as the "Reconsideration Decision".
- [4] Mr. Chao seeks judicial review of that reconsideration decision on the basis that it was patently unreasonable. The respondents are Hallmark, the Director of Employment standards, and the Employment Standards Tribunal. They all oppose the relief sought by Mr. Chao and take similar positions thereon.

Issues

- [5] The issues for me to decide on this petition are:
- a) Which of the Employment Standards decisions or Tribunal decisions is the proper one for me to judicially review?
 - b) What is the correct standard of review?
 - c) Was the reconsideration decision patently unreasonable?
- [6] I will address the legal basis for this appeal and the standard of review that I apply at the outset.
- [7] With regard to the legal basis, I can address the first two issues in a summary fashion.
- [8] Mr. Chao received two decisions from the Employment Standards Branch and one decision from the Employment Standards Tribunal. As such, he had the original decision and the appeal decision from the Employment Standards Branch, and finally, the reconsideration decision from the Employment Standards Tribunal.
- [9] I am satisfied, having heard the submissions of counsel, that it is the Reconsideration Decision that is the only proper decision to be the subject of this judicial review. In that regard, I rely on the decision in *Yellow Cab Company Ltd. v. Passenger Transportation Board*, 2014 BCCA 329.
- [10] Turning to the next issue, there is no dispute regarding the standard of review. The issues raised by Mr. Chao constitute questions of mixed fact and law. Hence the standard of review is that of patent unreasonableness. That standard derives from s. 103 of the Act which provides that s. 58 of the Administrative Tribunals Act, S.B.C. 2004, c. 45, applies to this tribunal. Section 58(2)(a) of the Administrative Tribunals Act provides that the standard of review is "patent unreasonableness" for tribunal decisions on findings of fact or law and the exercise of discretion in respect of matters within its exclusive jurisdiction under this privative clause. In this regard, I accept that the decisions of the tribunal are protected by s. 110 of the Act.
- [11] I further accept that the reconsideration decision was a discretionary decision by the tribunal. I accept that discretionary decisions are only unreasonable if the discretion was exercised:
- a) in an arbitrary fashion or in bad faith;
 - b) for an improper purpose;
 - c) on a basis that is entirely or predominantly on irrelevant factors; or
 - d) fails to take statutory requirements into account.

- [12] As a result of the factors listed above, my review of the reconsideration decision is done with a high level of deference. Background Facts
- [13] I now turn to the background facts.
- [14] Mr. Chao was an employee at Hallmark from 2015 to 2021. Hallmark operates a chicken processing plant and had mandated and implemented policies related to the COVID-19 pandemic to ensure health and safety in the workplace. Part of the company policy stipulated as follows: Anyone who is symptomatic or living in the same household with someone who is symptomatic is not allowed at the facility. A person shall be directed to get tested for COVID-19 at one of the testing sites. Self-quarantine at home until recovery. The person must obtain a clearance letter from Vancouver Coastal Health or the local public health authority in the area where they live before being allowed to enter the facility.
- [15] Mr. Chao was aware of this policy.
- [16] The events leading to Mr. Chao's dismissal occurred on September 28, 2021. During the course of his shift, at approximately 2:40 p.m., he went outside on a coffee break. He was advised by his life partner, who is also a worker at Hallmark, that she had tested positive for COVID. Under company policy, he was required to immediately absent himself from the workplace and self-isolate.
- [17] As found by the Tribunal, the petitioner breached the company policy. He failed to isolate. He continued to work for a further 3.75 hours after learning that his partner had COVID. Mr. Chao does not dispute any of these facts. Hallmark says that this act constituted a high-risk exposure to other workers pursuant to the provincial guidelines.
- [18] I discuss below an additional fact that Mr. Chao relies upon as his excuse for returning to work. He says that a supervisor directed him to return to work that afternoon.
- [19] On October 4, 2021, Hallmark terminated Mr. Chao's employment for cause. On October 5, 2021, Mr. Chao filed a complaint with the Employment Standards Branch. He alleged that Hallmark did not have cause to terminate his employment. He sought six weeks of pay in lieu of notice, plus reinstatement at work.
- [20] The Employment Standards Branch undertook an investigation which lasted from April 5, 2021, to January 23, 2023. The investigator conducted interviews of the parties and ultimately produced a report which was sent to both parties. Both parties were provided with an opportunity to respond to the investigation report and both of them did so.
- [21] Next, the investigation report, and the responses, were provided to another delegate of the Director of Employment Standards Branch in order to assess and determine whether Hallmark had contravened the Act by failing to pay the petitioner compensation for length of service. The delegate released a decision on April 6, 2023, finding that Hallmark did have just cause to terminate Mr. Chao's employment. Again, that was the first-level decision in this case.

- [22] On May 2, 2023, Mr. Chao filed an appeal of the first-level decision. On August 23, 2023, an appeal panel concluded that there was no basis for them to interfere with the first-level decision. It dismissed Mr. Chao's appeal on the basis that there was no reasonable prospect of success.
- [23] On September 4, 2023, Mr. Chao filed for a reconsideration of the appeal decision to the Employment Standards Tribunal. In his application for a reconsideration, Mr. Chao raised, for the first time, the assertion that on September 28, 2021, the reason he returned to work after his coffee break was that he was directed to do so by his supervisor. Mr. Chao says that he told his supervisor that he would have to get tested for COVID-19 the next day. The supervisor then told him to go back to work.
- [24] I pause to note that this assertion constitutes the crux of Mr. Chao's argument on patent unreasonableness.
- [25] The reconsideration panel dismissed Mr. Chao's application. They wrote:
12. The section 112(5) record reveals a consistent argument advanced by the [petitioner], an argument that said nothing about having been directed to work after disclosing that he had been exposed to Covid-19. In his original complaint, the [petitioner] stated that he was fired "I am guessing because of covid, I get tested . . . but they told me that I am no longer working here, they still fire me." The [petitioner] said absolutely nothing about being told to finish his shift notwithstanding his close and very recent Covid-19 exposure. In separate January 3, 2023, January 4, 2023, and January 5, 2023 e-mails to the Employment Standards Branch officer who was investigating his complaint, the [petitioner] maintained that since he never tested positive, he posed no threat to his fellow workers - no mention whatsoever of having been directed to complete his shift after disclosing his exposure.
 16. While I doubt the veracity of the [petitioner]'s present assertion that a supervisor directed him to complete his shift despite his disclosure that he had been exposed to Covid-19, in any event, this "new evidence" was not admissible on appeal, and it is equally inadmissible in this reconsideration application.
 17. I see no reason to disturb the Appeal Decision, which I consider to have been correctly decided. Positions of the Parties
- [26] I turn now to the positions of the parties.
- [27] As suggested, Mr. Chao's position is that the reconsideration decision was patently unreasonable because the panel did not accept his evidence that he was directed to go back to work by his supervisor. He says that during the investigation process and during prior hearings, he was never asked about why he went back to work. As a result, he did not give that information.

- [28] The respondents' position is consistent between themselves, (meaning Hallmark, the Director of Employment Standards, and the Employment Standards Tribunal). Put simply, they say that the decision was reasonable given the record before the reconsideration panel.
- Discussion
- [29] In short, in reviewing all of the submissions and all of the evidence in the record before the reconsideration panel, I accept the submissions of the respondents. As I outlined to the parties during the hearing, a tribunal decision is not patently unreasonable on the basis that the panel accepts or rejects a piece of evidence. The panel is entitled and empowered to make findings of fact. I am not entitled to disturb those findings.
- [30] In this case, I will go one step further. As noted by counsel for the Employment Standards Tribunal in her submissions, the record discloses that Mr. Chao's submission has been inconsistent on the supervisor issue. I was pointed to a letter provided by Mr. Chao dated May 17, 2023. He submitted this letter to the appeal division, setting out his grounds for appeal. In that letter, Mr. Chao wrote, in part: While on a coffee break, Mr. Chao who was already on shift for several hours already, went to move his vehicle into [his partner]'s parking and subsequently discovered [his partner] had just tested positive for Covid-19. This occurred at 2:40 PM, to which Mr. Chao returned to work until 6:40 PM, at which point [he] informed his supervisor that he needed to go get a Covid test and proceed with any necessary protocols.
- [31] Hence, part of the record before the reconsideration panel was an inconsistent statement provided by Mr. Chao to the appeal decision. On that basis, I find that there was ample evidence for the reconsideration panel to decide that Mr. Chao's submission regarding the supervisor's direction was not credible.
- [32] I return to note that a finding of fact by the reconsideration panel that is based on the prior decisions would not be a basis for me to find that the decisions were patently unreasonable. In this case, I find further that the finding of fact was reasonable. This leads me to the inescapable conclusion that the reconsideration decision was reasonable and based on the evidence in the record.
- [33] Mr. Chao's petition is dismissed.
- [34] Hallmark has sought costs in this matter, but I note that they did not press the matter. Given the economic inequality between the parties, I am disinclined to grant costs. "A. Ross J."

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