



Citation: Allan Hao also known as Guoling Hao (Re)
2019 BCEST 121

An appeal

– by –

Allan Hao also known as Guoling Hao,
an Officer of Greenwood HVAC Services Ltd.
("Mr. Hao")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

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

PANEL: Michelle F. Good

FILE No.: 2019/150

DATE OF DECISION: November 19, 2019

DECISION

SUBMISSIONS

Allan Hao also known as Guoling Hao on his own behalf as an Officer of Greenwood HVAC Services Ltd.

OVERVIEW

1. On August 13, 2019, pursuant to section 112(2) of the *Employment Standards Act* (the “ESA”), Allan Hao also known as Guoling Hao (“Mr. Hao”), an Officer of Greenwood HVAC Services Ltd. (“Greenwood HVAC Services” or the “Employer”), filed an appeal of a determination (the “Section 96 Determination”) issued by the Director of Employment Standards (the “Director”) on April 18, 2019.
2. In her February 21, 2019 Preliminary Findings letter to the Employer, Carrie H. Manarin, the delegate for the Director (the “Delegate”), found that the Employer was liable for payments and penalties arising from the contravention of the following sections of the *ESA*:
 - Section 17: The Employer failed to pay all wages owed in a pay-period
 - Section 18: Failure to pay all wages owed within 48 hours of terminating an employee
 - Section 40: The Employer failed to pay overtime wages
 - Sections 45/46: The Employer failed to pay statutory holiday pay
 - Section 63: The Employer failed to pay compensation for length of service
3. These contraventions resulted in employees Matt Dobbs, David Nenasheff, and Reece Schroeder (the “Complainants”) not receiving pay they were entitled to under these sections of the *ESA*. The Delegate found that the Complainants were entitled to a total amount owing of \$6,690.40 plus interest payable pursuant to section 88 of the *ESA*.
4. In the Preliminary Findings letter, the Delegate also found that the Employer was in contravention of section 46 of the *Employment Standards Regulation* as a result of failing to provide payroll records as and when required, pursuant to a Demand dated August 21, 2018. Accordingly, the Delegate ordered a mandatory administrative penalty of \$500.00 pursuant to section 98.1 of the *ESA*. The Delegate further ordered a \$500.00 mandatory administrative penalty for each of the five contraventions of the *ESA*. A total of \$3,000.00 in mandatory administrative penalties were assessed by the Delegate.
5. The Employer was given until March 7, 2019, to make final submissions to the Preliminary Findings and duly notified that if they did not make final submissions with sufficient evidence to merit a change in her Preliminary Findings, the Delegate would issue a Determination based on the evidence before her.
6. The Employer did not respond to the Delegate’s Preliminary Findings Letter.

7. The Delegate subsequently requested submissions from Mr. Hao as to his liability as an officer for the Complainants' unpaid wages. Mr. Hao's written submissions were forwarded to the Delegate through his legal counsel on March 22, 2018.
8. An e-mail contained in the section 112(5) record states that a determination was being issued against the Employer (the "Corporate Determination") on April 18, 2019. On that date, the Delegate issued the Section 96 Determination finding Mr. Hao liable for up to 2 months of the complainant's unpaid wages.
9. Mr. Hao filed an appeal of the Section 96 Determination.
10. This decision is based on the Mr. Hao's submissions and the section 112(5) record that was before the Delegate at the time the decision was made.

ISSUE

11. Mr. Hao submits that he, and his wife, Jing An, are not personally liable for the monetary orders made in the Section 96 Determination. Mr. Hao submits that his grounds for appeal are that new evidence has become available that was not available at the time the Section 96 Determination was being made. Mr. Hao seeks to have the Section 96 Determination cancelled by the Tribunal.

ARGUMENT

12. Mr. Hao's primary argument appears at points 5 and 6 of his September 16 submissions to the Tribunal. He asserts that he is not the Director of Greenwood HVAC Services and provides a filed copy of a Form 10 Notice of Change of Directors, dated April 24, 2018, naming Patricia Lachance as the Director of Greenwood HVAC Services. Mr. Hao also submitted the rest of the documents that were executed for the purpose the sale of the company to Ms. Lachance. Mr. Hao submits that since he was no longer the Director, he is not liable for the monetary orders made by the Delegate in the Section 96 Determination.

THE FACTS

13. Greenwood HVAC Services is a company duly incorporated under the laws of British Columbia. A BC Online Corporation Search of the Registrar of Companies establishes it was incorporated on June 4, 2008, and its Incorporation Number is BC0826876. Ms. Patricia Lachance is listed as the sole Director and Jing An and Allan Hao are listed as the Officers. The business ceased operating on or about September 14, 2018.
14. The wages owed to the Complainants were earned between April 17, 2018, and September 14, 2018, as confirmed by the Delegate based on records submitted by the Complainants.
15. In correspondence dated January 22, 2019, the Delegate was advised by legal counsel for Mr. Hao that he had entered into a Share Purchase Agreement on April 17, 2018, with LacMac Investments Inc., ("LacMac"). Counsel further advised that LacMac owned and operated Greenwood HVAC Services Ltd., commencing April 17, 2018, but defaulted on the sale and returned the shares and control and operation of the business to Mr. Hao on December 13, 2018.

16. On January 25, 2019, the Delegate was able to confirm via telephone conference with Kevin McAteer (“Mr. McAteer”) that he and Patricia Lachance owned LacMac; that there was indeed a purchase agreement with Mr. Hao, that the purchase by LacMac did not complete, and that LacMac had pulled out of the deal. At the same time, the Delegate confirmed with Mr. McAteer that LacMac was operating Greenwood HVAC Services between April 17, 2018, and September 14, 2018, the period of time the employees’ wages was earned.
17. Mr. McAteer further represented to the Delegate that LacMac did not have any payroll records as Ms. Lachance had left them in a box at the worksite in Vernon, BC. Mr. McAteer advised he was in the process of buying LacMac from Ms. Lachance and would assume liability for the unpaid wages. He stated he would be handling the complaints on behalf of Ms. Lachance and that he would provide the Delegate with a written response to the complaints by January 28, 2019, but subsequently failed to do so.
18. On January 31, 2019, through his legal counsel, Mr. Hao advised he was not aware of a box of payroll records being left at the workplace in Vernon, BC; that he had no key to the workplace and in fact the building had been emptied and the locks changed by the landlord.
19. On February 5, 2019, the Delegate spoke with Ms. Lachance who confirmed that Mr. McAteer was in the process of purchasing LacMac from her and that he would assume liability for the unpaid wages.
20. The Delegate advised Ms. Lachance that her agreement with Mr. McAteer was not binding on the Employment Standards Branch and that pursuant to section 96 of the *ESA*, as a Director, she was liable for up to two months wages for each employee.

ANALYSIS

21. Section 114 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:
 - 114 (1) 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

22. Further, the *ESA* outlines the grounds of appeal that are open to an appellant. Those grounds are listed at as follow:
- 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of 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.
23. Mr. Hao submits this appeal on the grounds that new evidence has become available that was not available at the time the Section 96 Determination was made.
24. The documents submitted pertaining to the sale of Greenwood HVAC Services to Ms. Lachance were all generated in 2018 at the time of the sale of the company to Ms. Lachance. The Delegate's investigation into this matter was commenced in January 2019. Clearly, the evidence Mr. Hao now relies on was available at the time the Delegate's Section 96 Determination was made on April 18, 2019.
25. Mr. Hao thus fails to establish that the evidence submitted in his appeal meets the new evidence test set down in section 112(1)(c) of the *ESA*.
26. Mr. Hao's argument that he is not personally liable under section 96(1) because he was not the Director of the company also fails as it is well established that he was an officer of Greenwood HVAC Systems when the wages were earned by the Complainants.
27. With respect to a corporate officer's liability for unpaid wages, the *ESA* provides as follows:
- 96 (1) A person who was a director *or* officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee. (emphasis added)
28. Mr. Hao is correct that at the relevant time when the complainant's wages were earned, Ms. Lachance was the sole Director of Greenwood HVAC Services. However, at that time, Mr. Hao was still an Officer of the company as the sale to Ms. Lachance had not perfected and the shares were never transferred. The fact that the sale was never completed was confirmed by Mr. Hao's legal counsel, Mr. McAteer, and Ms. Lachance herself.
29. Given that Mr. Hao was still an Officer of Greenwood HVAC Services at the time the complainants' wages were earned, he is personally liable for the monetary orders made in the Corporate Determination.
30. In his submission, Mr. Hao questions the interpretation of "up to two months unpaid wages" and seeks clarity at to which specific time period is reflected in the Section 96 Determination.
31. It appears that Mr. Hao understands the "two month" aspect of section 96(1) of the *ESA* to refer to specific dates that relate to when the Employees were paid. This is not the case. Rather, a plain language interpretation of this section supports that a director or officer is liable for a maximum of two months' unpaid wages so long as they were in fact a director or officer at the time those amounts were earned.

32. As noted above, Mr. Hao was an Officer of Greenwood HVAC Services during the relevant time period of April 17, 2018, and September 14, 2018, and thus remains personally liable for the amounts in question.
33. Mr. Hao submits other arguments suggesting that the date of hire of the Employees and their personal choices with respect to continued employment with Greenwood HVAC Services have relevance to whether or not he is liable. Neither of these considerations are relevant to a finding under section 96(1) of the *ESA*.
34. Mr. Hao further submits that during the time he operated Greenwood HVAC Services, he met all of his obligations under the *ESA* and other legislation. While this is to be commended, it is not a relevant consideration in the application of section 96(1) of the *ESA*.

ORDER

35. Section 115 of the *ESA* provides that the Tribunal may confirm, vary, or cancel the determination under appeal. Pursuant to section 115 of the *ESA*, I order the Determination dated April 18, 2019, be confirmed in the amount of \$6,753.75, together with any interest that has accrued under section 88 of the *ESA*.

Michelle F. Good
Member
Employment Standards Tribunal