

An appeal

- by -

Neil Hummel
("Mr. Hummel")

- of a Determination issued by -

The Director of Employment Standards

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

PANEL: Kenneth Wm. Thornicroft

FILE NO.: 2018A/106

DATE OF DECISION: April 17, 2019

DECISION

SUBMISSIONS

T. Ryan Darby

counsel for Neil Hummel

Chantal Webb

delegate of the Director of Employment Standards

INTRODUCTION AND BACKGROUND FACTS

1. On June 19, 2018, Chantal Webb, a delegate (the “delegate”) of the Director of Employment Standards, issued a determination pursuant to section 79 of the *Employment Standards Act* (the “ESA”) against Fusionpipe Software Solutions Inc. (“Fusionpipe”). I shall refer to this determination as the “Corporate Determination”.
2. By way of the Corporate Determination, Fusionpipe was ordered to pay the total sum of \$29,355.52 on account of unpaid wages (vacation pay) and section 88 interest due to five former employees (the “Complainants”). In addition, and also by way of the Corporate Determination, the delegate levied two separate \$500 monetary penalties against Fusionpipe (see section 98 of the *ESA*). Thus, the total amount payable under the Corporate Determination is \$30,355.52. Fusionpipe did not appeal the Corporate Determination (the appeal period expired on July 27, 2018) and it now stands as a final order.
3. On September 10, 2018, and in accordance with subsection 96(1) of the *ESA*, the delegate issued a separate determination against the present appellant, Neil Hummel (“Mr. Hummel”), given that Mr. Hummel was identified in the B.C. Corporate Registry as being a Fusionpipe officer. I shall refer to the determination issued against Mr. Hummel on September 10, 2018, as the “Section 96 Determination” and it is this determination that is before me on this appeal.
4. By way of the Section 96 Determination, Mr. Hummel was ordered to pay the total sum of \$29,588.56 on account of unpaid wages and section 88 interest. This liability is in relation to the unpaid wages owed by Fusionpipe to the Complainants. The delegate held that Mr. Hummel “was an officer between August 28, 2017 and February 27, 2018, when the Complainants’ wages were earned or should have been paid”, and since the Complainants’ individual unpaid claims all fell below the 2-month threshold set out in subsection 96(1) of the *ESA*, Mr. Hummel was personally liable for the full amount of each Complainant’s unpaid wage claim.
5. Mr. Hummel appealed the Section 96 Determination on all three available statutory grounds, namely, that the delegate erred in law, failed to observe the principles of natural justice, and on the ground that he had evidence that was not available at the time the Section 96 Determination was issued (see subsections 112(1)(a), (b), and (c) of the *ESA*). Mr. Hummel maintained that he was not a Fusionpipe officer or director when the Complainants’ unpaid wages were earned or should have been paid (although it should be noted that the Section 96 Determination was issued against Mr. Hummel solely on the basis that he was a Fusionpipe officer). He also maintained that the delegate’s unpaid wage calculations were incorrect. Finally, he stated that on January 11, 2018, he “resigned his position as Chief Financial Officer and director, effective that date”.

6. In an interim decision issued on December 24, 2018 (2018 BCEST 114), I identified some concerns I had regarding the scope of the delegate's original investigation and her ultimate findings (see 2018 BCEST 114 at paras. 14 – 18). Accordingly, I issued the following order:

Pursuant to subsection 114(2)(a) of the *ESA*, I am referring the matter of Mr. Hummel's personal liability under subsection 96(1) back to the Director for further investigation. The Director shall afford Mr. Hummel a reasonable opportunity to participate in the Director's further investigation. The Director shall have 90 days from the date of this decision to file a report with the Tribunal. The Tribunal, after hearing from the parties, will then issue a final order in this appeal.

SUBSEQUENT PROCEEDINGS

7. On March 11, 2019, the delegate filed a report with the Tribunal in which she stated: "Wages found to be owing to five former employees have been paid by the corporate directors. Accordingly, no further action is required regarding Mr. Hummel's personal liability because the former employees have been paid."
8. On March 11, 2019, the Tribunal's Registrar sent the delegate's report to Mr. Hummel's legal counsel with a request, directed to both Mr. Hummel and the delegate, for a written response by no later than March 25, 2019:

Given that there no longer appears to be a live dispute between the Director of Employment Standards and Mr. Hummel, the Panel assigned to the above-noted appeal is requesting a submission from the Appellant and the Director of Employment Standards on whether they object to the Tribunal preparing a consent order regarding the cancellation of the Determination.

9. By letter dated March 14, 2019, the delegate advised the Tribunal that the Director of Employment Standards did not object to the proposed cancellation of the Section 96 Determination by way of a consent order. Similarly, by letter dated March 18, 2019, Mr. Hummel's legal counsel advised that he had no objection to the issuance of a cancellation order.

FINDINGS

10. In light of the fact that both the delegate and Mr. Hummel's counsel have consented to a proposed cancellation order, I believe that such an order is appropriate at this juncture.
11. I wish to stress, however, that in issuing a cancellation order, I am not making any factual and/or legal findings with respect to Mr. Hummel's grounds of appeal, his status as corporate officer, or with respect to his personal liability under the Section 96 Determination.

ORDER

12. Pursuant to subsection 115(1)(a) of the *ESA*, the Section 96 Determination is cancelled.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal