

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Mekdam Nima, a Director and Officer of
Mekdam & Hamilton Construction Inc.
("Mr. Nima")

- 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: David B. Stevenson

FILE NO.: 2020/077

DATE OF DECISION: December 8, 2020

DECISION

SUBMISSIONS

Mekdam Nima	on his own behalf
Sarah Vander Veen	delegate of the Director of Employment Standards

OVERVIEW

1. Mekdam Nima (“Mr. Nima”) has filed an appeal under section 112 of the *Employment Standards Act* (the “ESA”) of a determination issued by Sarah Vander Veen, a delegate of the Director of Employment Standards (the “Director”) on January 30, 2020 (the “Determination”).
2. The Determination found Mr. Nima was a director and officer of Mekdam & Hamilton Construction Inc. (“Mekdam”), an entity associated with Colin Hamilton (“Mr. Hamilton”), an employer found to have contravened provisions of the *ESA*, at the time wages were earned or should have been paid to David Neilson (“Mr. Neilson”) and as such was personally liable under section 96 of the *ESA* for wages in the amount of \$1,122.02, an amount representing not more than two months’ unpaid wages, plus interest, for Mr. Neilson.
3. This appeal is grounded in a failure by the Director to comply with principles of natural justice in making the Determination.
4. In correspondence dated May 27, 2020, the Tribunal acknowledged having received the appeal, requested the section 112(5) record (the “record”) from the Director, notified the parties that no submissions were being sought from any other party pending a review of the appeal by the Tribunal and that, following such review, all or part of the appeal might be dismissed.
5. The record has been provided to the Tribunal by the Director, a copy has been delivered to Mr. Nima and Mr. Nielson, and an opportunity has been provided to object to its completeness. Mr. Nima has delivered several documents which he says were “missing” from the record. Those documents cannot be considered part of the record, as Mr. Nima’s main argument in this appeal and Mekdam’s argument in the appeal of the corporate determination is that both were unaware of any employment standards proceeding involving them and were not aware the corporate determination or the Determination under appeal here had been issued. Logically, the documents submitted by Mr. Nima would not be part in the record and would have to be considered in this appeal under section 112(1) (c) of the *ESA*: the “new evidence” ground of appeal.
6. The statutory deadline for filing an appeal of the Determination expired on March 9, 2020; the appeal was delivered to the Tribunal on May 12, 2020.
7. Mr. Nima is seeking an extension of the statutory appeal period and a cancellation of the Determination.

8. Mekdam filed an appeal against the determination (the “corporate determination”) associating Mekdam with Mr. Hamilton under section 95 of the *ESA* and the resulting wage and administrative penalty liability imposed by the corporate determination. That appeal was also delivered after the statutory appeal period expired and Mekdam sought substantially the same relief as Mr. Nima seeks in this appeal.
9. In decision 2020 BCEST 123, I granted an extension of the appeal period and allowed the appeal of the corporate determination to the extent of cancelling that part of the corporate determination associating Mekdam with Mr. Hamilton. The decision was issued October 30, 2020.
10. On the same day, the Tribunal sought submissions from the Director and Mr. Neilson on what effect the corporate determination might have on this appeal.
11. The Director has filed a submission; Mr. Neilson has not.
12. The Director says, given the outcome of the corporate determination, there is no dispute this Determination under appeal here should be cancelled.

THE FACTS AND ANALYSIS

13. For the same reasons as I gave in the appeal of the corporate determination, I allow an extension of the statutory appeal period for this appeal to May 12, 2020, the date on which it was delivered to the Tribunal.
14. It is unnecessary to consider the documents submitted by Mr. Nima in this appeal as they do not affect the issue being addressed here.
15. On the merits of the appeal, I agree with the Director that the Determination should be cancelled, as the cancellation of the decision to associate Mekdam and Mr. Hamilton eliminates the foundation upon which the imposition of personal liability on Mr. Nima was grounded.

ORDER

16. Pursuant to section 115 of the *ESA*, I order the Determination dated January 30, 2020, be cancelled.

David B. Stevenson
Member
Employment Standards Tribunal