

An appeal

- by -

Darryl Scott Sanders
("Sanders")

- 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.: 2020/039

DATE OF DECISION: June 18, 2020

DECISION

SUBMISSIONS

Darryl Sanders

on his own behalf

OVERVIEW

1. This is an appeal of a determination issued under section 96 of the *Employment Standards Act* (the “ESA”), which states that corporate directors and officers may be held personally liable for unpaid wages owed to an employee of the corporation. In my view, this appeal is wholly devoid of merit and, that being the case, must be dismissed under section 114(1)(f) of the *ESA*, save for a variance order that is required to correct the actual amount of the unpaid wage liability, since there is an obvious transcription or recording error in this regard.

BACKGROUND FACTS

2. On October 24, 2019, Shannon Corregan, a delegate of the Director of Employment Standards (the “delegate”), issued a determination (the “Corporate Determination”) against Sandman Enterprises Ltd. (“Sandman”) pursuant to section 79 of the *ESA*. By way of the Corporate Determination, Sandman was ordered to pay \$4,249.88 on account of unpaid wages and interest owed to a former employee (the “complainant”). Further, and also by way of the Corporate Determination, Sandman was ordered to pay an additional \$3,000 on account of six separate \$500 monetary penalties (see section 98 of the *ESA*). Accordingly, the total amount payable under the Corporate Determination is \$7,249.88.
3. On February 21, 2020, Sandman, represented by the present appellant, Darryl Scott Sanders (“Sanders”), filed a late appeal of the Corporate Determination. Mr. Sanders is a director and officer of Sandman, and he has appeared on its behalf in all of the proceedings relating to the Corporate Determination.
4. In a decision that is being issued concurrently with my decision in this appeal (see *Sandman*, 2020 BCEST 70), I refused Sandman’s application to extend the appeal period. I also concluded that apart from being a late appeal, Sandman’s appeal had no reasonable prospect of succeeding. According, I dismissed Sandman’s appeal of the Corporate Determination under subsections 114(1)(b) and (f) of the *ESA*. The Corporate Determination now stands as a final order.
5. The section 112(5) record before me shows that on February 14, 2020, the delegate sent a letter (by post and e-mail) to Mr. Sanders advising that she was considering issuing a determination against him personally, relating to the complainant’s still unpaid wages, under section 96 of the *ESA*. Section 96(1) states: “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.”
6. On February 14, 2020, Mr. Sanders replied to the delegate’s e-mail stating that he expected the B.C. Provincial Court would “overturn” the Corporate Determination and that he intended to file a complaint against the delegate regarding what he characterized as “government bullying and harassment”. In a

second e-mail to the delegate sent on February 18, 2020, Mr. Sanders stated that he was the “only director and officer on this company” [i.e., Sandman]. He also advised the delegate that he had contacted his local MLA and that the MLA’s office “will be contacting your supervisor”. He also suggested that the delegate had not acted with appropriate “due diligence”.

7. The delegate replied to Mr. Sanders’ February 18th e-mail asking him if he wished to provide anything substantive regarding her February 14th “preliminary findings” letter. Mr. Sanders replied, about 15 minutes later, by way of a brief e-mail in which he reiterated his position that he was scheduled to appear in the B.C. Provincial Court on February 20th “[w]here your Dept ruling is going to be overturned” [*sic*] and that his lawyer required “your supervisors name and phone number” [*sic*]. At this juncture, it should perhaps be noted that the B.C. Provincial Court does not have the statutory authority to hear an appeal of a determination issued under the *ESA* and, of course, has no concomitant authority to “overturn” a determination issued under section 79 of the *ESA* – the Tribunal has the exclusive statutory authority to hear and decide appeals of such determinations (see section 110 of the *ESA*). This state of affairs was pointed out to Mr. Sanders by way of an e-mail response from the delegate, sent to Mr. Sanders about 5 minutes after his February 18th missive.
8. The delegate again attempted to obtain any information from Mr. Sanders that he might wish to provide regarding his potential section 96 liability, but his only response was to reiterate his demand for the delegate’s supervisor’s name and contact information and to threaten to file a human rights complaint against the delegate.
9. The delegate, not having received any substantive reply from Mr. Sanders regarding his possible section 96 liability, issued a determination against him on February 26, 2020 (the “Section 96 Determination”) – the determination now before me in this appeal – and her accompanying “Reasons for the Determination” (the “delegate’s reasons”).

THE SECTION 96 DETERMINATION

10. As set out in the delegate’s reasons, Mr. Sanders was a Sandman director and officer when the complainant’s wages, as set out in the Corporate Determination, were earned or should have been paid. After accounting for the section 96 two months’ unpaid wages liability ceiling, the delegate determined that Mr. Sanders was liable for \$2,203.76 in unpaid wages, plus section 88 interest (\$248.74) – see delegate’s reasons, page R3.
11. However, the delegate appears to have made an error in the Section 96 Determination itself. Rather than setting out the unpaid wages as noted above, the delegate appears to have erroneously recorded the unpaid wages owed based on the amount set out in the Corporate Determination (i.e., \$4,056.00 not, as calculated in her reasons, \$2,203.76). The section 88 interest component is correctly recorded in the Section 96 Determination. In my view, this obvious transcription or recording error can easily be rectified by way of a variance order if this appeal is otherwise unsuccessful.
12. Apart from the unpaid wage order, the delegate also determined that Mr. Sanders was liable for the six separate \$500 monetary penalties that had been levied against Sandman in the Corporate Determination. Section 98(2) of the *ESA* states: “If a corporation contravenes a requirement of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the

contravention is also liable to the penalty.” The delegate’s justification for concluding that Mr. Sanders “authorized, permitted or acquiesced” in the Sandman contraventions is set out at pages R3 – R4 of her reasons.

REASONS FOR APPEAL

13. Mr. Sanders, on his appeal form, checked off all three statutory grounds of appeal, namely, error of law, breach of natural justice, and “new evidence”. The only “reasons” provided in support of these grounds of appeal are as follows:

Sandman Enterprises Ltd is a Limited liability company registered in the province of British Columbia. [sic]

The two individuals making claims against the company were taken on as subcontractors and all stress tests proving them to be subcontractors were followed and reviewed by myself as an officer and director. I performed my due diligence and followed the applicable laws. Therefore I Did not authorize any contraventions to the best of my knowledge. This is a civil matter not an employment standards case. there is an appeal filled in respect to the determinations all evidence has been submitted to ESB and should be requested from them, no evidence was provided to me from the other parties. [sic]

FINDINGS AND ANALYSIS

14. In my view, this appeal must be dismissed under section 114(1)(f) of the *ESA* as having no reasonable prospect of succeeding.
15. The above stated “reasons for appeal” do not even purport to raise a “natural justice” issue, and no “new evidence” whatsoever has been submitted on appeal, let alone evidence admissible within the *Davies et al.* framework (see BC EST # D171/03). The above reasons for appeal could be interpreted as raising an error of law relating to the status of the complainant. However, this question has now been finally determined (by way of the appeal decision concerning the Corporate Determination), and thus cannot be re-argued in this appeal by reason of the principle of issue estoppel.
16. The only issues that might be properly before the Tribunal in this appeal are whether: i) Mr. Sanders was a Sandman director or officer during the relevant time period (and he concedes that he was a director and officer during the relevant period); ii) the 2-month liability has been correctly determined (and, as noted above, there is an obvious transcription or recording error in the Section 96 Determination, but this error can easily be rectified by a variance order); and possibly in this case, iii) whether the delegate correctly interpreted and applied section 98(2) – but this is not an issue raised in Mr. Sanders’ appeal. Even if this latter argument were properly advanced, I am satisfied that the delegate correctly interpreted and applied section 98(2) in this case and I adopt the analysis set out at pages R3 – R4 of her reasons.

ORDERS

17. Pursuant to section 114(1)(f) of the *ESA*, this appeal is dismissed.
18. Pursuant to section 115(1)(a) of the *ESA*, the Section 96 Determination is varied to indicate that the wages payable are \$2,203.76, rather than \$4,056.00. In all other respects, the Section 96 Determination is confirmed as issued, together with whatever additional interest that has accrued under section 88 of the *ESA* since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal