

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Michael Rishi Prasad
("Mr. Prasad")

- 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.: 2020/001

DATE OF DECISION: August 12, 2020

DECISION

SUBMISSIONS

Baldeep Singh Gidda

on behalf of Michael Rishi Prasad

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*ESA*”), Michael Rishi Prasad (“Mr. Prasad”) has filed an appeal of a determination issued by Dora Tsao, a delegate of the Director of Employment Standards (the “Director”), on November 29, 2019 (the “Determination”).
2. The Determination found Mr. Prasad was a director and officer of Western Wheelcraft Ltd. (“Western Wheelcraft”), an employer found to have had contravened provisions of the *ESA*, at the time wages were earned or should have been paid to Harpreet Singh (“Mr. Singh”) and as such was personally liable under section 96 of the *ESA* for wages in the amount of \$543.79, an amount representing not more than two months’ unpaid wages, plus interest, for Mr. Singh.
3. This appeal is grounded in evidence coming available that was not available when the Determination was being made. Mr. Prasad is seeking a review of the Determination and an oral hearing on Mr. Singh’s complaint.
4. In correspondence dated January 28, 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. Prasad and Mr. Singh, and an opportunity has been provided to object to its completeness. There has been no such objection and, accordingly, the Tribunal accepts the record as being complete.
6. I have decided this appeal is appropriate for consideration under section 114 of the *ESA*. At this stage, I am assessing the appeal based solely on the Determination, the reasons for the Determination, the appeal, the written submission filed with the appeal, my review of the material that was before the Director when the Determination was being made and any additional evidence allowed to be included in the appeal. Under section 114(1), the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in the subsection, which reads:
 - 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 any 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 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.*

7. If satisfied the appeal or a part of it should not be dismissed under section 114(1), the Director and Mr. Singh will be invited to file submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1), it is liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeal will succeed.

ISSUE

8. The issue here is whether this appeal should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

THE FACTS

9. The relevant facts are brief.

10. The Director investigated a complaint filed by Mr. Singh, a former employee of Western Wheelcraft, and on July 3, 2019, issued a Determination against Western Wheelcraft (the “corporate determination”) finding it liable for wages to Mr. Singh in the amount of \$535.29. The Director also imposed administrative penalties on Western Wheelcraft in the amount of \$1,000.00.

11. An appeal of the corporate determination was filed and dismissed [see *Western Wheelcraft Ltd.*, 2020 BCEST 98].

12. A BC Online Registrar of Companies search conducted by the Director on April 30, 2019, indicated Western Wheelcraft was incorporated on September 18, 2006, and Mr. Prasad was listed as both director and officer. The search showed Mr. Prasad was listed as director and officer of Western Wheelcraft between December 11 and 18, 2018, when Mr. Singh’s unpaid wages were earned or should have been paid.

13. Based on the information acquired and the findings made, the Director concluded Mr. Prasad was liable under section 96 of the *ESA* for the amount set out in the Determination. Mr. Prasad was not found liable for the administrative penalties imposed on Western Wheelcraft in the corporate determination.

ARGUMENT

14. The argument made in this appeal is that the corporate determination is wrong because: the Director failed to contact any person from Western Wheelcraft in the initial stages of the investigation of Mr. Singh’s complaint; the allegations made by Mr. Singh are false; the Director failed to properly investigate

the complaint; new evidence has come available; Mr. Singh was never an employee of Western Wheelcraft; and Mr. Singh never had the qualifications to do the job he claimed to be employed to.

ANALYSIS

15. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*, which says:

- 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.

16. The complete answer to this appeal lies in the well-established principle that a person challenging a determination issued under section 96 is limited to arguing those issues which arise under that provision: whether the person was a director or officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limits for which a director or officer may be found personally liable; and whether circumstances exist that would relieve the director or officer from personal liability under section 96(2) of the *ESA*, which reads:

- (2) Despite subsection (1), a person who was a director or an officer of a corporation is not personally liable for
- (a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation
 - (i) is in receivership, or
 - (ii) is subject to action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency Act,
 - ...
 - (c) vacation pay that becomes payable after the director or officer ceases to hold office, or
 - (d) money that remains in an employee's time bank after the director or officer ceases to hold office.

17. The appeal by Mr. Prasad does not argue any of those issues. The focus of his appeal is the corporate determination. Mr. Prasad, as a director and officer of a corporation, is precluded from raising and arguing the corporate liability. The right to appeal and raise arguments against the corporate determination belongs to the corporation and, as indicated, an appeal by the corporation has been filed and dismissed.

18. Mr. Prasad has raised the ground of appeal set out in section 112(1)(c).

19. The Tribunal has a discretion to accept new or additional material presented with an appeal as evidence and such evidence is tested against several considerations before the Tribunal will accept it: see *Davies and others (Merilus Technologies Inc.)*, BC EST # D171/03.
20. In this case, however, Mr. Prasad has presented no material with the appeal that might be scrutinized under this ground.
21. There is absolutely nothing in the appeal that shows the Director made an error in the Determination. The material in the record confirms Mr. Prasad was a director of Western Wheelcraft at the time wages were earned or should have been paid, that the liability imposed on him is within the limits for which a director may be found personally liable under section 96 and there are no circumstances that would relieve Mr. Prasad's personal liability under the *ESA*.
22. Based on all of the above, I find this appeal has no reasonable prospect of succeeding. The purposes and objects of the *ESA* are not served by requiring the other parties to respond to it. The appeal is dismissed under section 114(1)(f) of the *ESA*.

ORDER

23. Pursuant to section 115 of the *ESA*, I order the Determination dated November 29, 2019, be confirmed in the amount of \$543.79, together with any interest that has accrued under section 88 of the *ESA*.

David B. Stevenson
Member
Employment Standards Tribunal