



EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Ranjit Dulay, a.k.a. J D Dulay, a director of R D Drywall Ltd.  
("Mr. Dulay")

- 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:** Maia Tsurumi

**FILE No.:** 2020/162

**DATE OF DECISION:** February 24, 2021

## DECISION

### SUBMISSIONS

Ranjit Dulay	on his own behalf
Harvey Sidhu	on behalf of Ranjit Dulay

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “ESA”), Ranjit Dulay, a.k.a. J D Dulay, a director of R D Drywall Ltd. (“Mr. Dulay”) has filed an appeal of a determination (the “Personal Determination”) issued by Shannon Corregan, a delegate (the “Delegate”) of the Director of Employment Standards (the “Director”) on October 23, 2020. The Delegate determined that Mr. Dulay was personally liable to Gagandeep Singh Danodia (the “Complainant”) under section 96 of the *ESA* for \$12,393.34 in wages, plus accrued interest of \$573.73. The Delegate also found Mr. Dulay personally liable to pay administrative penalties of \$5,000 imposed on R D Drywall Ltd. for contraventions of sections 17 (paydays), 18 (payment of wages upon termination), 21 (deductions), 27 (wage statements), 40 (overtime), 45 (statutory holiday pay), 46 (work on a statutory holiday), 58 (vacation pay), and 63 (compensation for length of service) of the *ESA* and section 46 (production of records) of the *Employment Standards Regulation* (the “Regulation”).
2. Mr. Dulay appeals the Personal Determination on the grounds that the Delegate erred in law and evidence has become available that was not available at the time the Determination was being made.
3. Mr. Dulay also asks for an extension to the statutory appeal period for the Personal Determination from November 30, 2020, to December 31, 2020.
4. For the reasons set out below, I decline to grant the extension of time to file the appeal pursuant to sub-section 109(1)(b) of the *ESA*.
5. My decision is based on the submissions made by Mr. Dulay (the “Extension Submissions”) and Harvey Sidhu (the “Appeal Submissions”) in the Appeal Forms, the sub-section 112(5) record (the “Record”), the Personal Determination, and the Reasons for the Determination (“Reasons”).

### ISSUE

6. The issue before the Employment Standards Tribunal (the “Tribunal”) is whether an extension of the statutory appeal period should be granted, and if granted, whether this appeal should be allowed or dismissed pursuant to sub-section 114(1)(f) of the *ESA*.

## THE DETERMINATION

### Background

7. On July 9, 2019, the Complainant filed a complaint (the “Complaint”) with the Employment Standards Branch, alleging he was owed regular wages, overtime wages, statutory holiday pay, vacation pay and compensation for length of service and that R D Drywall Ltd. made unauthorized deductions from his wages.
8. The Delegate investigated the Complaint and on August 14, 2020, issued a Determination against R D Drywall Ltd. (the “Corporate Determination”). In the Corporate Determination, the Delegate found wages and interest of \$42,447.26 were owed to the Complainant. She also imposed \$5,000 in administrative penalties on R D Drywall Ltd. for its contraventions of the *ESA*. The Corporate Determination and a notice to directors and officers about their personal liability under the *ESA* were sent to the registered and records office of R D Drywall Ltd., to Mr. Dulay, and to Jaspreet Kaur Dulay, his wife. The statutory appeal deadline for the Corporate Determination was no later than September 21, 2020.
9. Also, on August 14, 2020, the Delegate sent a letter to Mr. and Mrs. Dulay, with a copy to R D Drywall Ltd.’s registered and records office. In the letter, the Delegate made a preliminary finding that both individuals were directors of the company at the time the wages owed to the Complainant were earned and should have been paid and therefore they were personally liable to pay the equivalent of two months’ wages to the Complainant. The Delegate also made a preliminary finding that Mr. Dulay was personally liable for the corporate penalties arising from R D Drywall Ltd.’s contraventions of the *ESA*. The Delegate received no response to this letter.

### Issues Before the Delegate

10. The issues before the Delegate were whether:
  - a. Mr. Dulay was a *de facto* director of R D Drywall Ltd. and therefore personally liable under sub-section 96(1) of the *ESA* for two months’ worth of the wages (plus interest) owing to the Complainant; and
  - b. under sub-section 98(2), Mr. Dulay was personally liable for the administrative penalties issued to R D Drywall Ltd.

### The Delegate’s Decision

11. On October 23, 2020, the Delegate issued the Determination under appeal: the Personal Determination. The Delegate concluded that:
  - a. Mr. Dulay was a *de facto* director of R D Drywall Ltd. and was personally liable under sub-section 96(1) to the Complainant for two months’ wages, plus interest; and
  - b. was personally liable under sub-section 98(2) for the administrative penalties issued to R D Drywall Ltd.

12. Although the Delegate's BC Online Corporation search of July 19, 2019, listed Ms. Dulay as the sole director of R D Drywall Ltd. and did not list any officer information, the Delegate considered section 96 of the *ESA*, which defines a director of a corporation as "*a person who is a member of the board of directors or other governing body of the corporation, regardless of the title by which that person is designated.*" The evidence before the Delegate indicated R D Drywall Ltd. did not have a formal governing body, so she considered how the business was governed in practice. Where the corporate records do not list an individual as a director or officer, the Director may deem an individual a director or officer if there is sufficient evidence that the individual is clearly functioning as a director or officer of that company: *John Moore*, BC EST # D095/11. If this is the case, then the corporate director is deemed a "*de facto*" director.
13. The Delegate considered whether Mr. Dulay exercised the typical functions, tasks or duties that a corporate director would exercise in the normal or usual course of events, including whether he participated in the management of R D Drywall Ltd., made or cancelled agreements on R D Drywall Ltd.'s behalf, reviewed financial reports or oversaw financial matters, handled payroll, dealt with creditors, established the corporations' policies and objectives, directed employees and/or approved corporate budgets.
14. The Delegate concluded that Mr. Dulay was a *de facto* director of R D Drywall Ltd. based on the following evidence from her investigation that Mr. Dulay:
- a. obtained customers, provided them quotes on work, and entered into agreements for services on behalf of R D Drywall Ltd.;
  - b. directed employees of R D Drywall Ltd. as to when, where, and how to work;
  - c. managed the business by deciding what work R D Drywall Ltd. should perform and by hiring and firing employees;
  - d. was named as the primary contact of R D Drywall Ltd. in the Labour Market Impact Assessment documents relating to the Complainant; and
  - e. signed the offer of employment given to the Complainant by R D Drywall Ltd.
15. The Delegate also said it was significant that Mr. Dulay participated on behalf of R D Drywall Ltd. in the investigation that led to the Corporate Determination and referred to the Complaint as a false claim against "*him.*" He never indicated the Delegate should have been speaking to Ms. Dulay instead of him.
16. Because Mr. Dulay was a *de facto* director of R D Drywall Ltd., under sub-section 96(1), he was personally liable for up to two months' unpaid wages to the Complainant. This amounted to \$12,393.34 (of the \$40,756.41 owing to the Complainant), plus interest of \$573.73.
17. In the Corporate Determination, the Delegate found R D Drywall Ltd. breached sections 17, 18, 21, 27, 40, 45, 46, 58, and 63 of the *ESA* and section 46 of the *Regulation*. These breaches resulted in \$5,000 in administrative penalties (a mandatory \$500 penalty for each breach). Under sub-section 98(2) of the *ESA*, a director who authorizes, permits or acquiesces in a contravention of the *ESA* is personally liable to pay the penalty for that violation.

18. The Delegate found Mr. Dulay personally liable for the administrative penalties because his testimony indicated he was the guiding mind behind R D Drywall Ltd.'s operations. Mr. Dulay controlled R D Drywall Ltd.'s clients, the jobs it accepted, and the employees it hired and fired, including the Complainant. Mr. Dulay told the Delegate he directed the Complainant at job sites and was aware of the hours the Complainant worked. The evidence was that Mr. Dulay was the only representative of R D Drywall Ltd. who gave the Complainant directions about his work and hours of work. Mr. Dulay said he made deductions to the Complainant's wages and was aware that the Complainant was not paid statutory holiday or vacation pay and was paid only once per month. Mr. Dulay was the only representative of R D Drywall Ltd. who spoke to the Delegate during her investigation.
19. Although the Delegate provided her preliminary findings about sub-sections 96(1) and 98(2) of the *ESA* to Mr. Dulay, he never responded to her.

### **ARGUMENT**

20. Mr. Dulay's Extension Submissions, submitted on November 30, 2020, with the first version of the Appeal Form, say he needed more time to make his submissions in the appeal because he was waiting for his bank to produce records of cancelled cheques issued to the Complainant. He said he was in India until August 28, 2020, because of Covid-19 and so was delayed in getting these documents from his bank. Further, because of Covid-19, his bank would not give him a date by which it would produce the records.
21. On December 31, 2020, Harvey Sidhu ("Mr. Sidhu") filed a second version of the Appeal Form with the Appeal Submissions on behalf of Mr. Dulay. The Appeal Submissions say as follows:
- a. Mr. Dulay was stuck in India because of Covid-19 and so he was not able to properly participate in all hearings and so it was procedurally unfair for the Delegate to proceed with her investigation into the Complaint and therefore there should be a new investigation into the Complaint;
  - b. all wages owed to the Complainant by R D Drywall Ltd. were paid and proof of payment is provided with the Appeal Form;
  - c. the Complainant quit R D Drywall Ltd. and although Mr. Dulay contacted him multiple times he refused to come back to work; and
  - d. the Complainant and a friend threatened Mr. Dulay in person in May 2019 and the Complainant threatened Mr. Dulay over the phone a number of times.

### **ANALYSIS**

22. Mr. Dulay requested an extension of time for filing his appeal from November 30 to December 31, 2020, under paragraph 109(1)(b). I dismiss Mr. Dulay's request. My reasons are as follows.
23. As held by the Tribunal in *Liisa Tia Anneli Niemisto*, BC EST # D099/96, extensions of time should not be granted as a matter of course. While the Legislature has established tight time frames for filing an appeal from a Determination, the time periods established in the *ESA* are not that unusual: *Liisa Tia Anneli Niemisto*, *supra*, at p. 3.

24. The Tribunal has established criteria to provide guidance in determining whether or not to extend the time periods for appeals from decisions of the Director. These criteria are set out in the *Niemisto* decision. Appellants seeking time extensions for requesting an appeal from a Determination should satisfy the Tribunal that:
- i) there is a reasonable and credible explanation for the failure to request an appeal within the statutory time limit;
  - ii) there has been a genuine and ongoing *bona fide* intention to appeal the Determination;
  - iii) the respondent party (i.e., the employer or employee), as well the Director, must have been made aware of this intention;
  - iv) the respondent party will not be unduly prejudiced by the granting of an extension; and
  - v) there is a strong *prima facie* case in favour of the appellant.

*Niemisto* at p. 3; see also *Gorenshtein v. British Columbia*, 2013 BCSC 1499 at paras. 28 and 57

25. These criteria are not an exhaustive list. There may be other factors that ought to be considered. Further, in my view, not all of the above factors may be applicable in determining whether an extension should be granted or not, depending on the circumstances of each case.

26. Mr. Dulay filed his Appeal Form, written reasons for requesting an extension to the statutory appeal period, a complete copy of the Personal Determination, and written Reasons within the statutory time limits. The remaining item required to perfect the appeal was the Appeal Submissions. I take from this that Mr. Dulay had a genuine and ongoing *bona fide* intention to appeal the Personal Determination and the Complainant and the Director were made aware of this intention. Furthermore, a one-month extension would not unduly prejudice the Complainant and Director.

27. Despite the above, two very important criteria are decisive as to why the extension request is denied.

28. First and foremost, I find Mr. Dulay's explanation for why he wants an extension of time to make his written submissions on the appeal is not reasonable or credible. He said he needed time to get records of canceled cheques paid to the Complainant from his bank. His explanation as to why he could not get these records by November 30, 2020, to file this appeal was that because of Covid-19 he was unable to get back to Canada from India until August 28, 2020, and also because of Covid-19, his bank had not given him a date by which they would provide him with these records. However, this appeal is about the Personal Determination. In the Personal Determination, the Delegate found that Mr. Dulay is personally liable under section 96 of the *ESA* as a director of R D Drywall Ltd. to pay two months' wages, plus accrued interest to the Complainant, and found that Mr. Dulay is liable under sub-section 98(2) of the *ESA* to pay the \$5,000 in administrative penalties imposed on R D Drywall Ltd. Any information regarding alleged payments of wages made to the Complainant relate to the Corporate Determination and so is not relevant to the appeal before me.

29. Second, I conclude Mr. Dulay does not have a strong *prima facie* case on appeal. In coming to this conclusion, in addition to considering the Personal Determination, Appeal Forms, Extension Submissions, Record and Reasons, I considered the Appeal Submissions filed on December 31, 2020.

30. As I explained above, this is an appeal of the Personal Determination. In the Personal Determination, the Delegate found that Mr. Dulay was a *de facto* director of R D Drywall Ltd. at the time the Complainant earned wages or should have been paid wages. Thus, Mr. Dulay is personally liable for two months' wages, with accrued interest, to the Complainant. The Delegate also found Mr. Dulay authorized, permitted or acquiesced in R D Drywall Ltd.'s contraventions of the *ESA* and so he is personally liable to pay the \$5,000 administrative penalty imposed on that company for its breaches of the *ESA*.
31. The arguments and evidence (paystubs and records of cashed cheques) in the Appeal Submission do not address any of the matters that are permitted to be raised relating to Mr. Dulay's personal liability under section 96 of the *ESA*. He does not dispute the finding that he was a *de facto* director of R D Drywall Ltd. when the wages of the Complainant were earned or should have been paid, nor does he dispute that he should not be held personally liable because he falls within the circumstances described in sub-section 96(2).
32. In case I misunderstood Mr. Sidhu's submission about procedural unfairness and he is in fact submitting that the investigation leading to the Personal Determination was procedurally unfair (although I note that the Delegate's notes at p. 157 of the Record suggest this is not the case), I have also considered whether Mr. Dulay has a strong *prima facie* case on this basis. I find he does not.
33. Principles of natural justice (also called procedural fairness) are, in essence, procedural rights that ensure that parties know the case made against them, are given an opportunity to reply to the case against them and have their case heard by an impartial decision-maker: see *AZ Plumbing and Gas Inc.*, BC EST # D014/14 at para. 27. Procedural fairness requirements in administrative law are functional, and not technical, in nature. They are also not concerned with the merits or outcome of the decision. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it: *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396 at para. 65.
34. There is nothing in the Personal Determination, the Reasons, the Record, the Extension Submissions or the Appeal Submissions that indicate the Delegate breached any principle of natural justice in making the Personal Determination. The Delegate told Mr. Dulay on August 14, 2020, about her investigation into, and her preliminary findings about, whether he was personally liable under the *ESA*. He knew the case against him and had ample opportunity to respond and chose not to do so. Mr. Dulay was back in Canada by the end of August and could have at the latest responded to the Delegate at that time. Furthermore, given the investigation resulting in the Corporate Determination and Mr. Dulay's involvement in it from India, he could have responded to the Delegate from abroad even earlier than his return to Canada.

**ORDER**

35. Pursuant to sub-section 109(1)(b) of the *ESA*, I decline to extend the time for filing the appeal and pursuant to section 115(1)(a) of the *ESA*, I confirm the Determination dated October 23, 2020.

---

**Maia Tsurumi**  
**Member**  
**Employment Standards Tribunal**