

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Sandeep Haror, a Director of Target Secure Tech Inc.
(the “Appellant”)

- 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: Ryan Goldvine

FILE NO.: 2021/034

DATE OF DECISION: July 13, 2021

DECISION

SUBMISSIONS

Avtar Singh Khurana

on behalf of the Appellant

OVERVIEW

1. This decision addresses an appeal filed under section 112 of the *Employment Standards Act* (the “ESA”) by Sandeep Haror (the “Appellant”) of a determination made by Dan Armstrong, a delegate of the Director of Employment Standards (the “Director”), on April 22, 2020 (the “Determination”).
2. The Determination concluded that the Appellant, as a Director of Target Secure Tech Inc., was personally liable for wages and interest, and penalties, that were owing pursuant to a separate determination dated March 6, 2020, against Target Secure Tech Inc. (the “Corporate Determination”).
3. The Tribunal received the appeal on April 13, 2021 (the “April submission”). The Appellant sought an extension of the statutory appeal period to May 7, 2021 and sought to overturn the Determination on the basis that evidence has become available that was not available at the time the Determination was being made.
4. On April 30, 2021, the Tribunal acknowledged receipt of the appeal and confirmed that written reasons for the Determination (the “Reasons”) had been requested of the Appellant but had not been received by that date. I note that although the Appellant did not submit a copy of the Reasons with his appeal, a different delegate of the Director included a copy of the Reasons when they submitted the section 112(5) record (the “Record”) to the Tribunal.
5. On May 21, 2021, the Appellant’s representative filed a further submission with the Tribunal (the “May submission”).
6. I have concluded that this case is appropriate to consider under section 114 of the *ESA*. Accordingly, at this stage, I am assessing the appeal based solely on the Determination and Reasons, the written submission filed with the appeal, and my review of the material that was before the Director when the Determination was being made (the “Record”).

ISSUE(S)

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

THE DETERMINATION

8. The issue before the Director was whether the Appellant was personally liable for the unpaid wages, and interest, and penalties found owing in the Corporate Determination.

9. The delegate issued the present Determination finding the Appellant personally liable for the amounts under the Corporate Determination.
10. The delegate confirmed through a BC Registry Services search that the Appellant was a director at all material times, and as the period of employment was less than two months, the Appellant was personally liable for entirety of the wages and interest owing pursuant to section 96 of the *ESA*.
11. The delegate also confirmed that, pursuant to section 98(2) of the *ESA*, the Appellant was personally liable for the administrative penalties issued in the Corporate Determination, having overseen and coordinated all aspects of the business. The delegate found that the Appellant was “personally responsible for keeping proper payroll records and paying wages to Mr. Dhall yet refused to do so.”
12. In his reasons, the delegate also confirmed the Appellant’s opportunities to refute the Complainant’s allegations, and that they did not attend the Complaint Hearing that occurred on January 6, 2020, nor respond to subsequent inquiries as to their whereabouts.

ARGUMENT(S)

13. The Appellant requested an extension to the statutory appeal time limit to May 7, 2021 and cites section 112(1)(c) as the ground for appeal that “evidence has become available that was not available at the time the determination was being made.”
14. The Appellant has not provided reasons for the delay in filing the appeal.
15. The Appellant asks for the Determination to be overturned, indicating that “we would like to settle this, Target Secure owes him \$2000, please ask him to fix his invoice and we will pay him all at once”.

ANALYSIS

16. Section 112(2) of the *ESA* provides that an appeal is not perfected unless an appellant files a completed appeal form and a copy of the Reasons with the Tribunal.
17. The Appellant indicated on the Appeal Form, included in its April submission to the Tribunal, that the Reasons were being submitted to the Tribunal; however, they were not. Although requested to do so, the Appellant has not provided the Tribunal with a copy of the Reasons.
18. There is no indication in the materials before me that the Appellant requested the Reasons from the Director. This notwithstanding, a copy of the Reasons was provided to the Tribunal by a delegate of the Director.
19. The Appellant also provides no reasons for the nearly one-year delay in requesting the appeal.
20. The *ESA* imposes an appeal deadline on appeals to ensure they are dealt with promptly: see section 2(d).
21. The *ESA* allows an appeal period to be extended on application to the Tribunal. In *Metty M. Tang*, BC EST # D211/96, the Tribunal expressed the approach it has consistently followed in considering requests to extend the time limit for filing an appeal:

Section 109 (1) (b) of the *Act* provides the Tribunal with the discretion to extend the time limits for an appeal. In my view, such extensions should not be granted as a matter of course. Extensions should be granted only where there are compelling reasons to do so. The burden is on the appellant to show that the time period for an appeal should be extended.

22. I find no reason to depart from my conclusions in *Target Secure Tech Inc., 2021 BCEST 61*, with respect to the appeal of the Corporate Determination as they relate to the Appellant's request for an extension of the time limit for filing an appeal. Accordingly, relying on the same facts and analysis, I am able to dismiss this appeal under section 114(1)(b) as having been filed outside of the statutory appeal deadline.
23. The Appellant is, through his appeal of the Determination, advancing the same arguments that were made in the unsuccessful appeal of the Corporate Determination.
24. Section 96 of the *ESA* provides as follows:
- (1) 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.
 - (2) Despite subsection (1), a person who was a director or 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 an individual or group terminations, if the corporation is in receivership,
 - (b) any liability to an employee for wages, if the corporation is subject to an action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act
25. Applying the doctrine of *issue estoppel*, the Appellant is limited to the following three issues in this appeal:
- 1) That the person appealing was not a director/officer of the company at the time wages were earned or should have been paid;
 - 2) That the calculation of the director/officer's personal liability is incorrect; and/or,
 - 3) That the director/officer should not be liable for the penalty, where a penalty has been assessed, on the grounds that he or she did not authorize, permit, or acquiesce in the company's contravention.
26. Had I been persuaded to extend the time limit for filing this appeal, I nevertheless find no basis for the appeal. The Appellant has not disputed that he was a director of Target Secure Tech Inc. at the time the Complainant's wages were earned or should have been paid. The Appellant has also not challenged the Director's calculation of his personal liability. I find no grounds to interfere with the Determination.

ORDER

27. The Appellant's request for an extension to the statutory appeal period is denied pursuant to my discretion under section 109(1)(b).
28. Further to this, the appeal is dismissed under section 114(1)(b) as having been filed outside of the statutory appeal period.
29. In the alternative, even if the Appellant had been granted an extension to the statutory appeal period, the appeal is nevertheless dismissed under section 114(1)(f) as disclosing no reasonable prospect of success.
30. Pursuant to section 115 of the *ESA*, the Determination dated April 22, 2020, is confirmed.

Ryan Goldvine
Member
Employment Standards Tribunal