

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by -

Shiraz Chatur, a Director of Noor Investments Ltd.  
("Mr. Chatur")

- 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.:** 2021/092

**DATE OF DECISION:** February 07, 2022

## DECISION

### SUBMISSIONS

Shiraz Chatur on his own behalf

### OVERVIEW

1. Shiraz Chatur (“Mr. Chatur”) has filed an appeal under section 112 of the *Employment Standards Act* (the “ESA”) of a determination issued by Leif Jensen, a delegate of the Director of Employment Standards (the “Director”), on July 22, 2021 (the “Determination”).
2. The Determination found Mr. Chatur was a director of Noor Investments Ltd. (“Noor”), an employer found to have contravened provisions of the *ESA*, at the time wages were earned or should have been paid to Kanwaljeet Ahluwalia (“Ms. Ahluwalia”), and as such was personally liable under section 96 of the *ESA* for wages in the amount of \$5,441.25 and, under section 98(2) of the *ESA*, for administrative penalties in the amount of \$2,500.00. The total amount of the Determination is \$7,941.25.
3. This appeal is grounded in an assertion that the Director failed to observe principles of natural justice in making the Determination. The appeal seeks to have the Determination cancelled.
4. The Determination clearly indicated that any appeal of it was required to be delivered to the Tribunal by 4:30 pm on August 30, 2021. This appeal was not delivered to the Tribunal until October 19, 2021, more than seven weeks after the statutory appeal period had expired.
5. The appeal contains a request to extend the time for filing the appeal to October 19, 2021 – the date on which it was delivered to the Tribunal.
6. In correspondence dated October 26, 2021, the Tribunal notified the parties, among other things, that no submissions were being sought from any other party, either on the merits of the appeal or on the request to extend the appeal period, requested additional documents from Mr. Chatur, requested the section 112(5) record (the “record”) from the Director, and requested submissions from Mr. Chatur and Ms. Ahluwalia on document disclosure.
7. The record has been provided to the Tribunal by the Director and a copy has been delivered to the parties, who have been given the opportunity to object to its completeness. In correspondence dated December 13, 2021, Mr. Chatur objected to the completeness of the record, providing a list of documents he felt had been omitted from the record. In response, the Director has pointed out those documents were included in the record and provided their location within it. In correspondence dated January 17, 2022, Mr. Chatur requested additional time to make further objections to the record. In a letter dated January 24, 2022, the Tribunal rejected the contention made by Mr. Chatur that the record was incomplete and denied his request for additional time. Having reviewed the record and the January 24 letter from the Tribunal I am satisfied Mr. Chatur has no valid objections to the record and accept it as complete.

8. 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 Determination, the appeal, the written submission filed with the appeal and my review of the material that was before the Director when the Determination was being made. 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 the 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.

9. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1), the Director and Ms. Ahluwalia 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 the statutory appeal period should be extended and whether, in any event, there is any reasonable prospect the appeal can succeed.

## ISSUE

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

## THE FACTS

11. The facts necessary to decide this appeal, as set out in the Determination, are relatively brief.

12. Ms. Ahluwalia filed a complaint alleging Noor had contravened the *ESA* by failing to pay her all wages owed under the *ESA*. The Director investigated the complaint and, on January 25, 2021, issued a determination (the “corporate determination”), finding Noor was liable to Ms. Ahluwalia for wages, including interest, in the amount of \$18,980.71. The Director also imposed administrative penalties on Noor in the amount of \$2,500.00.

13. The corporate determination, which included a notice to directors and officers explaining their personal liability under the *ESA*, was sent by registered mail to the address for Noor, with copies to its registered and records office and to its directors and officers.
14. Noor unsuccessfully appealed the corporate determination: see 2021 BCEST 50. Noor has not paid the amount of the corporate determination.
15. The Determination under appeal here was issued July 22, 2021, and was delivered by registered mail to the home address for Mr. Chatur and to his e-mail address; a copy was delivered by registered mail to the address for Noor.
16. The Determination indicates, and the record confirms, the Director conducted a BC Online Registrar of Companies search on August 19, 2019. The search showed Noor was incorporated on March 06, 2003. Mr. Chatur was listed as a director as of August 1, 2016, and remained a director between that date and July 26, 2019.
17. Based on that information the Director concluded Mr. Chatur was a director of Noor during a period that Ms. Ahluwalia's wages were earned or should have been paid and was liable under section 96 of the *ESA* for the amount set out in the Determination.
18. Mr. Chatur was also found liable, under section 98(2) of the *ESA*, for the administrative penalties imposed on Noor in the corporate determination. This finding was based on evidence provided by Mr. Chatur, who was acting on behalf of Noor, during the investigation which resulted in the corporate determination. That evidence, and the analysis of it, is set out in the Determination under appeal here.

## **ARGUMENTS**

19. Mr. Chatur submits the Determination is "unfair and excessive". He argues that his decision to withhold wages from Ms. Ahluwalia was not "deliberate or premeditated" but was the consequence of cash flow problems of which Ms. Ahluwalia was aware. There are further arguments which suggest Ms. Ahluwalia should be found liable to Noor for their "significant losses and the ultimate closure of the business", which is not a matter that can be addressed under the *ESA*.
20. Mr. Chatur says the corporate determination should be re-examined and follows this assertion with an argument against the corporate determination.
21. Mr. Chatur has provided no explanation for failing to deliver an appeal of the Determination within the statutory appeal period. It does appear, however, that this appeal was spurred by collection efforts conducted by the Employment Standards Branch
22. Neither has Mr. Chatur made any argument against the findings made in the Determination relating to his personal liability under section 96 of the *ESA*.
23. He challenges the finding under section 98(2), disputing the conclusion that he "authorized, permitted or acquiesced" in the contraventions of the *ESA* by Noor, but he has provided nothing of substance that would show the conclusion of the Director on this matter is a reviewable error.

## ANALYSIS

24. The *ESA* imposes an appeal deadline on appeals to ensure they are dealt promptly: see section 2(d). 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.
25. The Tribunal has developed a principled approach to the exercise of its discretion as set out in *Re Niemisto*, BC EST #D099/96. The following criteria must be satisfied to grant an extension:
- 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.
26. The above criteria have been considered and applied in numerous decisions of this Tribunal. These criteria are not exhaustive. Other, perhaps unique, criteria can be considered. The burden of demonstrating the existence of such criteria is on the party requesting an extension of time. No additional criteria have been advanced in this appeal. The Tribunal has required “compelling reasons” for granting of an extension of time: *Re Wright*, BC EST #D132/97.
27. In this case, the record shows the Determination was sent to Mr. Chatur by registered mail and attached to an e-mail sent by the Director on July 22, 2021.
28. A delay of more than seven weeks is substantial; there is no explanation for not requesting an appeal within the statutory time limit.
29. The circumstances indicate Mr. Chatur formed no intention to appeal the Determination until the Director took collection action.
30. The employer has apparently ceased operating; any further delay will unduly prejudice Ms. Ahluwalia.
31. When considering the *prima facie* strength of the case presented by Mr. Chatur in this appeal in a request for an extension of the time period for filing an appeal, the Tribunal is not required to reach a conclusion that the appeal will fail or succeed, but to make an assessment of the relative merits of the grounds of appeal chosen against established principles that operate in the context of those grounds.

32. 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.

33. It is a 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 of the corporation ceases to hold office, or
  - (d) money that remains in an employee's time bank after the director or officer of the corporation ceases to hold office.

34. The appeal by Mr. Chatur does not argue any aspect of his section 96 liability. He challenges the finding of liability under section 98(2), but the focus of his appeal is the corporate determination. Mr. Chatur, as a director 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 of the corporate determination has been filed and dismissed.

35. Mr. Chatur argues against his liability for the administrative penalties imposed on the corporation, but as indicated above, there is nothing in the appeal that remotely approaches the burden on him to show that part of the Determination was a reviewable error.

36. There is nothing in the appeal that addresses the ground of appeal alleging the Director failed to observe principles of natural justice in making the Determination. Mr. Chatur was alerted to the potential for personal liability in the corporate determination.

37. In sum, there is nothing in the appeal that shows the Director made an error in the Determination. The material in the record confirms Mr. Chatur was a director of Noor 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. Chatur of his personal liability under that provision. As well, the evidence in the record supports the conclusion of the Director that Mr. Chatur should be held liable, as a director of the employer, for the administrative penalties imposed in the corporate determination.
38. My conclusion on this criterion militates strongly against an extension of the appeal period, as I find the appeal lacks the merit necessary to warrant extending the statutory appeal period. Accordingly, an extension of the appeal period is denied, and the appeal is dismissed as being out of time.
39. Even if I were to grant an extension of the appeal period, based on all of the above, I find this appeal has no prospect at all of succeeding and would be dismissed under section 114(1)(f). The purposes and objects of the *ESA* would not be served by requiring the other parties to respond to it.
40. In sum, the appeal is dismissed under section 114(1)(b) and (f) of the *ESA*.

#### **ORDER**

41. Pursuant to section 115 of the *ESA*, I order the Determination dated July 22, 2021, be confirmed in the amount of \$7,941.25, together with any interest that has accrued under section 88 of the *ESA*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**