



Citation: Bastian Global Holdings Inc., City Rewards Inc., Global Culinary  
Experiences Ltd., and Cantina Norte Culinary Services Ltd. (Re)  
2023 BCEST 63

EMPLOYMENT STANDARDS TRIBUNAL

Appeals  
pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

- by -

Bastian Global Holdings Inc., City Rewards Inc., Global Culinary Experiences  
Ltd., and Cantina Norte Culinary Services Ltd.

- of a Determination issued by -

The Director of Employment Standards

**Panel:** Kenneth Wm. Thornicroft

**File Nos.:** 2023/061, 2023/063, 2023/064, and  
2023/065

**Date of Decision:** August 14, 2023

## DECISION

### SUBMISSIONS

Jeremy Mitchell

on behalf of Bastian Global Holdings Inc., City Rewards Inc., Global Culinary Experiences Ltd., and Cantina Norte Culinary Services Ltd.

### INTRODUCTION

1. I have before me four separate applications, made pursuant to section 109(1)(b) of the *Employment Standards Act* (“ESA”), to extend the time period for requesting an appeal of a determination. The applicants are Bastian Global Holdings Inc. (“Bastian Global”), City Rewards Inc. (“City Rewards”), Global Culinary Experiences Ltd. (“Global Culinary”), and Cantina Norte Culinary Services Ltd. (“Cantina Norte”). I shall refer to these parties collectively as the “applicants.” Bastian Global is the applicant in Tribunal file number 2023/061; City Rewards in file number 2023/063; Global Culinary in file number 2023/064; and Cantina Norte in file number 2023/065.
2. The applicants were each named in a determination issued by Shannon Corregan, a delegate of the Director of Employment Standards (“delegate”), on March 30, 2023 (“Determination”). By way of the Determination, the applicants, together with two other corporations – EzTix Event Ticketing Inc. and EzTix Inc. – were jointly ordered to pay a total \$31,173.91 (including section 88 interest) to a former employee (“complainant”). Further, and also by way of the Determination, the delegate levied seven separate \$500 monetary penalties that are jointly and severally payable by all six corporations (see section 98 of the *ESA*). Accordingly, the applicants, together with the other two “EzTix” corporations, are jointly and severally liable for a total of \$34,673.91.
3. Prior to issuing the Determination, on July 4, 2022, another delegate issued an “Investigation Report”, summarizing the parties’ evidence and argument submitted during the investigation (this report was incorrectly dated July 4, 2021). All parties were provided with an opportunity to respond to this report and did so.
4. On May 31, 2023, the delegate issued a “Corrigendum Determination” which is identical to the March 30, 2023 Determination, save for correcting the name of Global Culinary to read “Global Culinary Experiences Ltd.” rather than “Global Culinary Experiences Inc.” on the first and second pages of the Determination, and on the first page of the delegate’s “Reasons for the Determination” issued concurrently with the Determination (“delegate’s reasons”). Global Culinary Experiences Ltd. is the correct name of this corporation. I should note that elsewhere in the original Determination, and in the delegate’s reasons, Global Culinary was correctly identified. I consider these very minor amendments to be corrections of technical irregularities under section 123 of the *ESA*.
5. The Determination was served on all four applicant firms at either their registered and records office, or their “delivery address”, as set out in records maintained by BC Registry Services and/or Corporations Canada. The Determination was also served by e-mail on Bastian Global. The Determination was sent by e-mail and regular mail to Jeremy Brandon Mitchell, who represented the applicants during the complaint

investigation, and also represents the applicants in these appeal proceedings. Mr. Mitchell is the sole director of Bastian Global, Global Culinary and Cantina Norte, and is one of two directors of City Rewards (the Determination was also mailed to the other director). The Determination was served on Mr. Mitchell in his capacity as a director of all six corporations named in the Determination, not in his personal capacity, since the Determination does not include a section 96 order against either Mr. Mitchell or the other director of City Rewards. Service on Mr. Mitchell, in his representative capacity as a corporate director, was lawful service on all six corporations named in the Determination (see section 9 of the *Business Corporations Act*).

6. In his application materials, Mr. Mitchell acknowledges that all four applicant corporations received the Determination on March 30, 2023, the same day that the Determination was issued.
7. As set out in a text box headed “Appeal Information” on page D4 of the Determination, the deadline for appealing the Determination to the Tribunal was 4:30 PM on April 24, 2023, since it was served on all four applicants by electronic mail (by way of electronic service on Mr. Mitchell). Bastian Global was also separately served by electronic mail.
8. Mr. Mitchell, on behalf of the four applicants, filed identical (save for the name of the applicant) Appeal Forms and section 109(1)(b) applications on May 8, 2023 for Bastian Global, City Rewards, and Cantina Norte. Mr. Mitchell also filed a section 109(1)(b) application on behalf of Global Culinary on May 8, 2023, but did not file an Appeal Form on behalf of this latter corporation until May 15, 2023.
9. In each of the Appeal Forms, the appeal deadline was stated to be May 8, 2023 but, as noted above, since the Determination was served by electronic mail on all four applicants, the deadline was April 24, 2023. The asserted grounds of appeal for each applicant, as set out in the Appeal Forms, are that the delegate erred in law (section 112(1)(a) of the *ESA*), and that “new evidence” is now available (section 112(1)(c) of the *ESA*).
10. In my view, the applicants have not provided justifiable reasons for extending the appeal period and, that being the case, the section 109(1)(b) applications are denied, and these appeals are hereby dismissed. My reasons for making these orders are set out, below.

## THE DETERMINATION

11. Since, at this juncture, I am principally addressing the applicants’ section 109(1)(b) applications, I shall only very briefly outline the circumstances giving rise to the Determination. As set out in the delegate’s reasons, the complainant was employed in a managerial capacity (Director of Finance) from early October 2017 to December 22, 2020. The delegate determined that he provided managerial/executive services to each of the applicants (as well as the other two corporations named in the Determination) and, as such, all six corporations were jointly his “employer” for purposes of the *ESA*.
12. The delegate also determined that all six corporations were “one employer” for purposes of the *ESA* and, accordingly, she issued a section 95 “associated employers” (sometimes called a “common employer”) declaration. The effect of a section 95 declaration is to make all constituent entities (in this case, all six corporations named in the Determination), “jointly and severally liable for payment of the amount stated in a determination.”

13. The delegate determined, relying on section 66 of the *ESA*, that the complainant's employment was terminated in late December 2020, and he was thus entitled to section 63 compensation for length of service (\$1,696.16). The bulk of the complainant's monetary award consisted of unpaid wages (\$21,785.81). He was also awarded vacation pay (\$5,472.13) and section 88 interest (\$2,219.81), thus bringing the total unpaid award, including interest, to \$31,173.91.
14. As previously noted, the delegate also levied seven separate \$500 monetary penalties against the applicants and the other two corporations named in the Determination.

### **THE APPLICATION TO EXTEND THE APPEAL PERIOD (Section 109(1)(b) of the *ESA*)**

15. Mr. Mitchell, on behalf of the applicants, advanced an identical justification for extending the appeal period as it concerned each applicant. In four separate e-mails sent to the Tribunal on May 8, 2023, Mr. Mitchell (who describes himself as the "Managing Director" of each of the applicant corporations) stated:

Please find our request for an extension to the deadline for appeal attached. This determination was issued nearly 18 months after the incident occurred and when issued, I was working overseas. I have only returned to Canada in the last few days and will require time to retrieve the required documentation and evidence in order to properly submit my appeal request.

16. In a separate memorandum attached to Bastian Global's Appeal Form (filed on May 8, 2023), Mr. Mitchell briefly outlined his substantive reasons for appealing the Determination, and also made the following assertions regarding the appeal period extension request:

2. We received the determination on March 30th, 2023, at which time I was overseas and unable to access the documents required in order reply [*sic*] within the statutory timeframe. I have returned to Canada only this week and will require time to coordinate documents that have been in storage for several years.

3. We were not provided adequate time to prepare the required evidence at the time of the initial investigation considering that the company in questions [*sic*] was in bankruptcy and all documents and evidence had been transferred to the bankruptcy trustees. Furthermore, additional evidence was required from 3rd parties from whom we could not control the time [*sic*] and we were not provided sufficient time to gather the documents considering the world was in a global pandemic and most businesses were operating at extremely limited capacity resulting in extreme delays in any type of servicing request. The additional evidence that we will gather that is now available will show clearly that the determination made by the Employment Standards Branch was incorrect.

As a result of the limited timeline, the Employment Standard Branch made a determination based on assumptions and heresy [*sic*] provided by the employee in question. We will require a couple weeks to gather the required paperwork to show that our company, Bastian Global Holdings Inc, operated under a vendor agreement with EzTix Event Ticketing Inc and was not indeed a member of the "EzTix Group" as the Employment Standards Branch has alleged.

We would please request until May 31st 2023 in order to prepare and gather the required evidence at which point we will provide your office with the evidence to prove our position in this matter.

17. Mr. Mitchell filed identical (save for changing the applicant's name) memoranda on behalf of City Rewards, Global Culinary, and Cantina Norte (all also filed on May 8, 2023).
18. On May 11, 2023, a Tribunal registry staff member, by way of response to the applicants' requests for an extension to May 31, 2023, sent separate e-mails (one for each Tribunal file) to Mr. Mitchell requesting that he provide further information by May 31, 2023. However, Mr. Mitchell was also expressly advised that this additional time to supply further information did not constitute an extension of the appeal period.
19. On May 31, 2023, Mr. Mitchell sent largely identical (save for the name of the applicant) e-mails to the Tribunal. In these submissions, Mr. Mitchell provided further explication of the reasons for appeal, but did not provide any further evidence or argument in relation to the appeal period extension requests.

### **SECTION 109(1)(b) – FINDINGS AND ANALYSIS**

20. The Determination was issued on March 30, 2023 and Mr. Mitchell concedes that the applicants received a copy of the Determination on that day. The Determination was sent, by electronic mail, to Bastian Global and to Mr. Mitchell on March 30, 2023. Mr. Mitchell was served with a copy of the Determination in his representative capacity as a director of all six corporations named in the Determination – the e-mail address was the same address that Mr. Mitchell consistently used to communicate with the Employment Standards Branch during the investigation. Further, and in any event, section 122(3) of the *ESA* states that where a determination is served by electronic mail, it is deemed to have been served 3 days after transmission.
21. As noted above, Mr. Mitchell was served with a copy of the Determination in his representative capacity as a director of each of the corporations named in the Determination. Section 9 of the *Business Corporations Act* states that a corporation may be validly served in a “legal proceeding” (which includes an “administrative or regulatory action or proceeding”) by serving a corporate director. Bastian Global was separately served by electronic mail. City Rewards, Global Culinary, and Cantina Norte were all also served by regular mail.
22. As set out in the Determination, the appeal period expired on April 24, 2023. Mr. Mitchell's first communication with the Tribunal, in which he indicated that he intended to appeal the Determination on behalf of the applicants, was on May 8, 2023 – 39 days after the Determination was sent to him by electronic mail, and 14 days after the appeal deadline set out in the Determination expired.
23. The applicants have advanced the following explanations for their untimely appeals: first, the Determination was received on March 30, 2023, at which point in time Mr. Mitchell “was overseas and unable to access the documents required in order to reply within the statutory timeframe” and “returned to Canada only this week” (i.e., the week of May 8, 2023); and, second, that the applicants required “a couple of weeks to gather the required paperwork” to prepare their arguments on appeal.

24. The Tribunal assesses whether to extend an appeal period in accordance with the considerations identified in *Niemisto*, BC EST # D099/96:
- 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 on-going *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
  - iv) there is a strong *prima facie* case in favour of the appellant.
25. In my view, the applicants' case fails on every single one of these criteria.
26. As Mr. Mitchell concedes, the applicants received a copy of the Determination on the day it was issued (March 30, 2023). The applicants have not explained why they were unable to deal with this matter more expeditiously, other than to say that Mr. Mitchell was "overseas" as of March 30, 2023. However, he made no effort to communicate with the Tribunal on behalf of the applicants before his initial May 8, 2023 e-mails. Even assuming Mr. Mitchell was "overseas" up until the week of May 8, 2023, he still could have communicated with the Tribunal electronically shortly after March 30, 2023. Mr. Mitchell has not provided any explanation for his failure to do so during this 5-week period after the Determination was served.
27. Mr. Mitchell says that he needed various documents in order to respond to the Determination. However, the grounds of appeal that the applicants now advance in these appeals are very similar to those advanced during the investigation by the Employment Standards Branch. The reasons for appeal set out in the applicants' May 15, 2023 submissions, and expanded somewhat in the applicants' subsequent May 31, 2023 submissions (which almost exclusively concern the correctness of the section 95 declaration), closely mirror the submissions made during the investigation by way of response to the "Investigation Report".
28. The Investigation Report was prepared by a delegate of the Director of Employment Standards (a different individual from the delegate who issued the Determination), and was issued on July 4, 2022. Mr. Mitchell provided a response, by e-mail, on July 18, 2022 setting out his position regarding why a section 95 declaration should not be issued. The position advanced in Mr. Mitchell's May 31, 2023 submissions to the Tribunal on behalf of the applicants is not materially different from the position he advanced in his July 18, 2022 e-mail to the Employment Standards Branch in response to the Investigation Report. In light of this situation, I fail to see why Mr. Mitchell needed "'more time", since all the relevant information was previously set out in his July 18, 2022 e-mail.
29. There is nothing in the material before me to indicate that any of the applicants had on ongoing intention to appeal the Determination as and from the date of its issuance. As noted above, the applicants had the Determination in hand on March 30, 2023, but took no affirmative steps of any kind with respect to an appeal until May 8, 2023. There is nothing in the record before me to indicate that any sort of intention to appeal was communicated to the Director of Employment Standards, or to the complainant, or to the Tribunal, prior to May 8, 2023.

30. There has been considerable delay in this matter. One of the corporations named in the Determination (not one of the applicants) is now in bankruptcy. The complaint was filed on December 22, 2020 and now, over 2 ½ years later, there is still no final resolution. The amount awarded to the complainant under the Determination represents a significant sum, about one-third of his gross salary with his former employers. Further delay will, in my view, prejudice the complainant's right to a timely resolution of his complaint. I note that one of the employer corporations has already entered bankruptcy and Mr. Mitchell, in an electronic communication made by way of response to the Investigation Report, stated that at least two other corporations named in the Determination were essentially defunct. Section 2(d) of the *ESA* states that one of the statute's purposes is to provide fair and efficient resolution of *ESA* disputes. With that purpose in mind, I see no reason for further delay in this matter unless there is a compelling case on appeal.
31. Turning to this latter consideration, I consider these appeals to have no reasonable prospect of succeeding and, that being the case, even if the appeal periods were extended, I would nonetheless summarily dismiss the appeals under section 114(1)(f) of the *ESA*.
32. There are two asserted grounds of appeal – “error of law” and “new evidence”. The alleged errors of law concern the correctness of the section 95 declaration, and the finding that the complainant was in an employment relationship with all four applicant firms (although the applicants' argument on this latter point is not clearly articulated). The delegate's analysis of these two issues (i.e., section 95 and the identity of the complainant's actual employer) is set out at pages R15-R18 of her reasons. With respect to the “employer identity” issue, there was evidence before the delegate that the complainant performed “work”, as defined in section 1(1) of the *ESA*, for each of the applicant corporations. The delegate's reasons (at page R16) state:
- It is [the complainant's] evidence that he performed work for [the applicants as well as other companies], including drafting the corporate organization structures that the bank required for general risk reviews, projects related to insurance and finance needs, functioning as a delegate for the banking services for the group of companies, making applications for services on their behalf, handling transfers between companies, and supporting the opening of Cantina's restaurant. Mr. Mitchell provided some general information about the corporations' operations, but he did not dispute [the complainant's] claims that he performed the work outlined above on behalf of these corporations. He also did not dispute [the complainant's] statement that funds were transferred between these corporations, though he disputes [the complainant's] claim that the purpose of these transfers was to bankrupt EzTix.
- (my underlining)
33. As for the section 95 declaration, the delegate's reasons indicate that there was uncontested evidence regarding transferring funds between the firms to support business operations, and that the complainant provided management services to each of the applicants (page R17). There was common control of all applicant corporations. The complainant (who was a senior finance executive) provided evidence that the applicant firms were included under a single profile with the firms' banker, HSBC Commercial Global Banking, “are maintained through the same NetSuite ERP [enterprise resource planning] system [and] were associated in the same project management software (Asana)” (page R4). The complainant also provided evidence (page R6), with respect to inter-corporate money transfers, and that:

[He] was becoming frustrated by seeing funds disappear from EzTix's accounts while customers were asking about their payouts...[and when he] asked questions about why funds were going to related companies instead of employees, Mr. Mitchell would become irritated. A significant amount of funds were [sic] transferred from EzTix to Cantina.

34. Whether a section 95 declaration was appropriate in the circumstances raises a question of mixed fact and law, in the sense that the decision-maker must apply a legal standard to a set of facts (see *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235). The delegate applied the correct legal standard (see *0708964 B.C. Ltd.*, BC EST # D015/11), and in light of the evidence before her, I am not satisfied that she made a “palpable and overriding error” in making a section 95 declaration in this case.
35. The “new evidence” was submitted on May 31, 2023, by way of further submissions to the Tribunal. Mr. Mitchell submitted three examples of “ownership structure charts” that he says were not provided to the Employment Standards Branch during the investigation because “these charts were not available to us at the time of the initial investigation as they had been included in the files provided to the bankruptcy trustee for EzTix Event Ticketing Inc. [and] we were able to recover these documents and provide them now as evidence of how the EzTix Group is defined.”
36. “New evidence” is admissible in accordance with the criteria set out in *Davies et al.*, BC EST # D171/03:
- i) the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;
  - ii) the evidence must be relevant to a material issue arising from the complaint;
  - iii) the evidence must be credible in the sense that it is reasonably capable of belief; and
  - iv) the evidence must have high potential probative value, in the sense that, if believed, it could, on its own or when considered with other evidence, have led the Director to a different conclusion on the material issue.

The applicants did not refer to the *Davies* decision, or otherwise address these criteria in their submissions.

37. The so-called “new evidence” is not, in any plausible sense, “new” evidence. These internal organizational charts should have been available to be submitted during the investigation. Even if the actual documents now submitted were not readily accessible (as Mr. Mitchell asserts), I find it wholly untenable to suggest that these documents could not have been re-created by Mr. Mitchell. He is the self-described “Managing Director” of all four of the applicant firms, and the sole director of three of these firms and, along with one other individual, a director of the fourth firm. On Mr. Mitchell’s own evidence, he is the sole shareholder in Bastian Global which, in turn, holds 100% of the issued shares of Global Culinary. No information has been submitted regarding the shareholding structure of the other two applicant firms, although the delegate’s reasons indicate that Bastian Global “wholly owns” Cantina Norte, and that Mr. Mitchell “partially owns” (whatever that may mean) City Rewards (page R8). Surely, he was in a position to provide accurate information about the corporate and shareholding structure of the applicant firms during the investigation.



38. Indeed, I note that information regarding the internal structure of the “EzTix” group of companies was provided to the Employment Standards Branch during the investigation (delegate’s reasons, pages R8-R9). Further, I do not consider this evidence to be particularly relevant or probative in light of the evidence before the delegate regarding the actual inter-corporate dealings among the applicants (discussed above).
39. A couple of other documents were also submitted as “new evidence” (for example, a Canada Revenue Agency statement regarding City Rewards) – these documents should have been available to be submitted to the Employment Standards Branch during the investigation and, even if they were not readily available, they are of very little, if any, evidentiary value in terms of the issues determined by the delegate.

### *Summary*

40. In my view, the applicants have not satisfied any of the *Niemisto* criteria governing applications to extend an appeal period. The applicants have not provided a credible explanation for their failure to file timely appeals, there is no evidence before me that the applicants have had an ongoing *bona fide* intention to appeal since first served with the Determination. Certainly, there is no evidence before me that such an intention was communicated to either the complainant or the Director of Employment Standards prior to May 8, 2023 (the date when the section 109(1)(b) applications were filed). The complainant, who has now been waiting for more than 2 ½ years to receive his unpaid wages, would suffer further prejudice if the appeal periods were extended, as that would entail additional delay in rendering a final judgment in this matter. Further, the appeals do not appear to have any presumptive merit. Accordingly, even if I were inclined to extend the appeal periods, I would, in any event, dismiss the appeals under section 114(1)(f) of the *ESA*.

### **ORDERS**

41. The applicants’ separate applications to extend the time for requesting an appeal of the Determination, made pursuant to section 109(1)(b) of the *ESA*, are all dismissed.
42. Pursuant to sections 114(1)(b) and (f) of the *ESA*, the applicants’ appeals are all dismissed.
43. Pursuant to section 115(1)(a) of the *ESA*, the Determination is confirmed as issued in the amount of \$34,673.91, together with whatever additional interest that has accrued under section 88 of the *ESA* since the date of issuance.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**