

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Hasibullah Tarzi, a Director of M&H Distribution Ltd.

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Ryan Goldvine

**FILE NO.:** 2023/011

**DATE OF DECISION:** August 17, 2023

## DECISION

### SUBMISSIONS

Hasibullah Tarzi on his own behalf, as a Director of M&H Distribution Ltd.

### OVERVIEW

1. Hasibullah Tarzi (“Appellant”), a Director of M&H Distribution Ltd., appeals a determination made by Mitch Dermer, a delegate of the Director of Employment Standards (“Director”), on December 22, 2022 (“Section 96 Determination”), pursuant to section 112 of the *Employment Standards Act* (“ESA”).
2. The Section 96 Determination follows from a determination against M&H Distribution Ltd. (“M&H”) awarding overtime wages, statutory holiday pay, vacation pay, and compensation for length of service (“Corporate Determination”), to Hassan Wali (“Complainant”). The Corporate Determination also imposed several administrative penalties against M&H. I decided the appeal of the Corporate Determination in 2023 BCEST 64 and varied the determination and referred the determination of the number of hours worked by the Complainant back to the Director for a new investigation.
3. 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 Section 96 Determination and Reasons, the written submission filed with the appeal, and my review of the material that was before the Director when the Section 96 Determination was being made (“Record”).

### ISSUE

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

### THE DETERMINATION

5. 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.
6. The Delegate issued the Section 96 Determination finding the Appellant personally liable for two months’ wages to the Complainant as that amount was less than the total amount owing to the Complainant by M&H.
7. The Delegate concluded there was insufficient evidence that the Appellant “authorized, permitted or acquiesced in the contravention(s) of the Employer,” and, accordingly, did not find the Appellant personally liable for the administrative penalties.

## ARGUMENTS

8. While the Appellant indicated in the grounds for appeal as being on the bases that the Director failed to observe the principles of natural justice in making the Section 96 Determination, and that new evidence has become available that was not available at the time the Section 96 Determination was made, the submissions before me do not directly address these grounds.
9. In fact, the Appellant simply appears to repeat the submissions made on behalf of M&H in respect of the appeal of the Corporate Determination.

## ANALYSIS

10. 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
      - (i) is in receivership, or
      - (ii) subject to an action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act
11. 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.
12. The Appellant has not disputed that he was a director of M&H 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 the Appellant has not advanced grounds to interfere with the Section 96 Determination.
13. However, since the quantum found owing in the Section 96 Determination is predicated on the findings that underlie the Corporate Determination which I referred back to the Director to be reheard, it follows that the Section 96 Determination must be referred back to the Director. There is no issue regarding the Appellant's status as a director and officer of M & H Distribution Ltd. as he does not argue that he was not a director and officer during the period of Mr. Wali's employment. However, the amount of personal

liability the Appellant may have must still be determined since Mr. Wali's unpaid wage claim must now be reheard.

**ORDER**

14. The Appeal is dismissed under section 114(1)(f) as disclosing no reasonable prospect of success.
15. Pursuant to section 115(1)(b) of the *ESA*, the Section 96 Determination dated December 22, 2022, is referred back to the Director to either be confirmed or varied as appropriate based on the outcome of the reinvestigation into the amount of wages owing.

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**Ryan Goldvine**  
**Member**  
**Employment Standards Tribunal**