

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Neesha Gaind, a director of Coin Masters Capital Inc.

- of a Determination issued by -

The Director of Employment Standards

PANEL: Carol L. Roberts

FILE NO.: 2023/075

DATE OF DECISION: October 20, 2023

DECISION

SUBMISSIONS

Sunny Khosla

on behalf of Neesha Gaind, a director of Coin Masters Capital Inc.

OVERVIEW

1. This is an appeal by Neesha Gaind, a director of Coin Masters Capital Inc. (“Coin Masters”), of a decision of a delegate of the Director of Employment Standards (“Director”) made on March 3, 2023 (“Personal Determination”).
2. On July 7, 2021, Anna-Elizaveta Lim (“Complainant”) filed a complaint with the Director alleging that Coin Masters had contravened the *Employment Standards Act* (“ESA”) in failing to pay her regular wages.
3. An Adjudicative delegate of the Director determined that Coin Masters had contravened sections 18, 21 and 58 of the *ESA* in making unauthorized deductions from the Complainant’s wages, and in failing to pay the Complainant wages and annual vacation pay. The Adjudicative delegate also determined that Coin Masters had failed to deliver payroll records in response to a Demand for Employer Records, contrary to section 46 of the *Employment Standards Regulation* (“Regulation”).
4. The Director concluded that the Complainant was entitled to the total amount of \$671.61 including accrued interest and imposed five \$500 administrative penalties for Coin Masters’ contravention of the *ESA* and the *Regulation*, for a total amount payable of \$3,171.61 (“Corporate Determination”). Coin Masters did not pay the amount owing, nor did it appeal the Corporate Determination within the statutory appeal deadline of February 10, 2023.
5. On March 3, 2023, the Director determined that Ms. Gaind was a director of Coin Masters at the time the wages were earned and should have been paid, and was personally liable for up to two months’ unpaid wages. The Director found Ms. Gaind personally liable for the full amount of the wages determined owing.
6. Ms. Gaind appeals the Personal Determination on the grounds that the Director failed to observe the principles of natural justice in making the Personal Determination. Ms. Gaind also seeks an extension of time in which to file the appeal.
7. Upon receiving Ms. Gaind’s appeal, the Tribunal sought and received the section 112(5) “record” from the Director.
8. This decision is based on the section 112(5) record that was before the Director at the time the Personal Determination was made, the appeal submissions, the Personal Determination, and the Reasons for the Personal Determination.

ISSUE

9. At issue is whether the Tribunal should grant Ms. Gaind's application for an extension of time in which to file the appeal and whether Ms. Gaind has demonstrated a basis for interfering with the Director's determination.

BACKGROUND

10. Ms. Gaind is one of Coin Masters' two directors, the other being her spouse, Sunny Khosla. Mr. Khosla submits that he first heard about the Corporate Determination and the Personal Determination on April 19, 2023, when he received a telephone call from an individual at the Employment Standards Branch ("Branch") regarding a payroll related debt. Mr. Khosla says that although the caller was able to provide some publicly available information regarding the corporation, the caller was unable to furnish any additional details. Mr. Khosla believed the call to be a scam since Coin Master never had any employees and requested that the caller mail him "official documents" related to the matter. Mr. Khosla provided the caller with the current mailing address of both directors.
11. Ms. Gaind received a copy of both the Personal Determination and the Corporate Determination by regular mail on May 1, 2023. The Corporate Determination sets out the amount of money owed to the Complainant, the sections of the *ESA* and *Regulation* that the Director determined had been contravened, and the penalty amounts. The Personal Determination found that, as a director of Coin Masters, Ms. Gaind was personally responsible for wages, pursuant to section 96 of the *ESA*.

ARGUMENT

12. While Mr. Khosla acknowledges that Ms. Gaind is a director of Coin Masters, he contended that Coin Masters never had any employees and that the email used by the individuals representing themselves as Coin Masters principles is not one used by Coin Masters. Consequently, the directors did not receive any of the email correspondence sent to them by the Branch. Mr. Khosla acknowledged that the mailing address listed for Coin Masters in the Federal Corporate registry had not been updated.

ANALYSIS

13. Section 112(1) of the *ESA* provides that a person may appeal a determination on 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.
14. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with a determination. I conclude that Ms. Gaind has met that burden.

Extension of time in which to file the appeal

15. The deadline for filing an appeal of the Personal Determination was April 11, 2023.

16. The Tribunal will not grant extensions of time as a matter of course; it will only do so where there are “compelling reasons” (see *Re: Wright*, BC EST # D132/97). The onus is on an appellant to show that the time period should be extended (see *Moen & Sagh Contracting Ltd.*, BC EST # D298/96).
17. Appellants seeking to extend the time period in which to file an appeal from decisions of the Director 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.
- (see *Niemisto*, BC EST # D099/96)

These criteria are not exhaustive. There may be other factors that ought to be considered and not all the above factors may be applicable in determining whether or not to grant an extension.

18. Ms. Gaind’s appeal was filed May 18, 2023, well over one month after the statutory appeal period expired. She submits that she was not aware of the Personal Determination until she received it by regular mail on May 1, 2023. I accept that is the case, based both on the record and on Mr. Khosla’s submissions. There is nothing in the record that suggests Ms. Gaind had any knowledge of the complaint, the investigation or the Personal Determination prior to the Personal Determination being sent to a new address provided by Mr. Khosla to Branch collections staff in April 2023.
19. While there is no evidence Ms. Gaind had a genuine and ongoing *bona fide* intention to appeal the Personal Determination before the statutory appeal deadline, I find that Ms. Gaind took timely steps to file the appeal once she became aware of it.
20. Coin Masters had a duty to maintain accurate and up to date information in the Federal Corporate registry. It did not do so, and all Branch correspondence was sent to an address at which the directors no longer reside. I am satisfied that neither Coin Masters nor Ms. Gaind had any notice of the complaint, the investigation process, the Corporate Determination, or the Personal Determination until May 2023.
21. I am not persuaded that, in the circumstances, the Complainant would be prejudiced by the granting of an extension. Although the Tribunal made several attempts to contact the Complainant, it was unable to do so as it has no current contact information for her.
22. In decision 2023 BCEST 87, I granted Coin Masters’ appeal of the Corporate Determination and cancelled the Corporate Determination. Given that the Corporate Determination has been cancelled, I allow the appeal and also cancel the Personal Determination.

ORDER

23. Pursuant to section 115(1)(a) of the *ESA*, I cancel the Personal Determination dated March 3, 2023.

Carol L. Roberts
Member
Employment Standards Tribunal