

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Ravinder Kaur Phutela  
("Appellant")

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Richard Grounds

**FILE NO.:** 2023/146

**DATE OF DECISION:** March 27, 2024

## DECISION

### SUBMISSIONS

Ravinder Kaur Phutela on her own behalf

### OVERVIEW

1. This is an appeal by Ravinder Kaur Phutela (“Appellant”), a director of 1184933 B.C. Ltd. carrying on business as QT Daycare, pursuant to section 112 of the *Employment Standards Act* (“ESA”) regarding a determination issued on September 8, 2023 (“Director Determination”), by Carrie Manarin, a delegate (“Delegate”) of the Director of Employment Standards (“Director”). The Delegate determined that the Appellant, in her capacity as a director, owed Harjot Kaur Sandher (“Complainant”) two months’ wages in the amount of \$3,520.26, interest in the amount \$247.49 and also owed \$3,000.00 in administrative penalties.
2. The Director Determination indicates that the deadline to appeal the Determination was October 3, 2023, if service of the Determination was made by email and by October 16, 2023, if the Determination was served by ordinary or registered mail. The Determination was served on the Appellant by both methods.
3. The Appellant submitted an incomplete appeal to the Tribunal on September 13, 2023, prior to the appeal deadline, and was granted additional time to perfect her appeal. Although the Appellant requests an extension to the appeal period to January 15, 2024, the Appellant has not provided any reasons why the appeal could not be perfected by either of the appeal deadlines indicated in the Director Determination.
4. For the reasons that follow, the appeal is denied.

### BACKGROUND AND ARGUMENT

#### *The Corporate Determination*

5. The Director issued a determination against 1184933 B.C. Ltd. on September 8, 2023 (“Corporate Determination”). In the Corporate Determination, the Delegate determined that the Complainant was owed wages in the amount of \$3,520.26 plus interest in the amount of \$247.49. The Delegate determined that 1184933 B.C. Ltd. had contravened sections 17, 18, 40, 45, 49.1 and 46 of the *ESA* and assessed administrative penalties in the total amount of \$3,000.00. The deadline to appeal the Corporate Determination was October 16, 2023.

#### *The Director Determination*

6. The Director Determination was also issued on September 8, 2023, because there was a fear of assets disappearing.<sup>1</sup> The Delegate determined that the Appellant was a director of 1184933 B.C. Ltd. at the

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<sup>1</sup> The title page of the Determination incorrectly references 1194933 B.C. Ltd. instead of 1184933 but all references in the notice letter and in the Determination itself correctly reference 1184933 B.C. Ltd.

time the wages owed were earned or should have been paid and was personally liable to pay up to two months' unpaid wages to the Complainant, which exceeded the amount of wages owed to the Complainant, and interest. The Delegate determined that the Appellant authorized, permitted, or acquiesced in the contraventions and was, therefore, also liable for the administrative penalties.

### *The Appeal*

7. On September 13, 2023, the Appellant submitted an Appeal Form naming 1184933 B.C. Ltd. as the Appellant and a copy of the Director Determination to the Tribunal.
8. On September 20, 2023, the Tribunal requested the Appellant submit a revised Appeal Form (naming the Appellant in her capacity as a director of 1184933 B.C. Ltd.) and also requested the reason and arguments for the appeal and any supporting documents by no later than October 16, 2023. The Tribunal also advised the Appellant that if she wished to file an appeal of the Corporate Determination, she must provide a separate complete appeal submission. No appeal of the Corporate Determination has been filed.
9. On October 16, 2023, the Appellant submitted an Appeal Form naming herself as the Appellant in her capacity as a director of 1184933 B.C. Ltd. but did not include the required reasons and arguments or any supporting documents. In the Appeal Form, the Appellant requests the Tribunal grant her until January 15, 2024, to provide her reasons and arguments and supporting documents to the Tribunal. The Appellant stated that she "need[s] time to collect the documents for arguments." The Appellant was granted until November 15, 2023, to submit the required information for the appeal.
10. On November 15, 2023, the Appellant provided reasons and argument for the appeal to the Tribunal. The Appellant submits that she was taught how to do the paystubs for 1184933 B.C. Ltd from the previous owner; she disagreed that the Complainant was owed overtime; it was not fair for the employer to pay the Complainant's sick time; and Wage Enhancement should not have been paid to the Complainant for statutory holidays. The Appellant did not provide reasons why the requested information could not be provided to the Tribunal by either of the appeal deadlines indicated in the Director Determination.
11. Submissions on the merits of the appeal were not requested from the parties.

### **ANALYSIS**

12. 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.
13. Section 114(1)(f) of the *ESA* provides that the Tribunal may dismiss all or part of an appeal if there is no reasonable prospect that the appeal will succeed.
14. In the Director Determination the Delegate found the Appellant was liable for the wages owed, interest and administrative penalties in her capacity as a director of 1184933 B.C. Ltd.

15. In her submissions, the Appellant has not raised any failures of the Director to observe the principles of natural justice specifically regarding the Direction Determination. Rather, the Appellant's submissions relate to alleged grounds of appeal regarding the Corporate Determination.
16. Section 96(1) of the *ESA* states that a person who is a director at the time wages of an employee of a corporation were earned or should have been paid is personally liable for up to two months' unpaid wages for each employee.
17. The Appellant, with respect to the appeal of the personal liability under section 96 of the *ESA*, is limited to arguing whether she was a director at the time the wages were earned and should have been paid and whether the amount found owing falls within the 2-month ceiling on the personal liability. With respect to the personal liability imposed under section 98(2), the Appellant is limited to arguing the issue of whether he or she authorized, permitted, or acquiesced in the contraventions of the *ESA* that resulted in the imposition of the administrative penalties against 1184933 B.C. Ltd.
18. The Appellant has not provided evidence to dispute that she was a director of 1184933 B.C. Ltd. at the time wages were earned or should have been paid to the Complainant. The Appellant has also not provided evidence to challenge the Delegate's conclusion that the wages payable under the Director Determination are within the limit on wages for which a director is liable under the *ESA*.
19. I find that the exceptions set out in section 96(2) of the *ESA* do not apply in this case.

## **ORDER**

20. The Appellant's appeal is dismissed under section 114(1)(f) of the *ESA* and the Director Determination that the Appellant is personally liable for wages, interest and administrative penalties is confirmed under section 115(1)(a) of the *ESA*.

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**Richard Grounds**  
**Member**  
**Employment Standards Tribunal**