

An appeal

- by -

Christopher (Chris) Gavin Robinson a Director of Maximum Performance Fitness Corp.

(“Robinson”)

– of a Determination issued by –

The Director of Employment Standards
(the “Director”)

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

and

An application for suspension

- by -

Christopher (Chris) Gavin Robinson a Director of Maximum Performance Fitness Corp.

(“Robinson”)

– of a Determination issued by –

The Director of Employment Standards
(the “Director”)

pursuant to Section 113 of the
Employment Standards Act R.S.B.C. 1996, C. 113 (as amended)

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE Nos.: 2014A/134 & 2014A/135

DATE OF DECISION: January 5, 2015

DECISION

SUBMISSIONS

Christopher (Chris) Gavin Robinson on his own behalf as a Director of Maximum Performance Fitness Corp.

INTRODUCTION

1. On August 12, 2014, a delegate of the Director of Employment Standards (the “delegate”) issued two separate determinations under section 79 of the *Employment Standards Act* (the “*Act*”) each in the total amount of \$15,850.38 representing unpaid wages and interest (\$15,350.38) owed to five former employees (the “complainants”) of a firm known as Maximum Performance Fitness Corp. (“Maximum Performance”) and a single \$500 monetary penalty levied under section 98 of the *Act*.
2. The two August 12, 2014, determinations were issued against Maximum Performance as the complainants’ employer and against Mr. Christopher Gavin Robinson, in his personal capacity as director of Maximum Fitness, under subsection 96(1) of the *Act*. Subsection 96(1) states that a corporate director “is personally liable for up to 2 months’ unpaid wages for each employee” of the corporation. This latter determination is the one at issue in these proceedings. I shall refer to the determination issued against Maximum Performance as the “Corporate Determination” and the determination before me in these proceedings as the “Section 96 Determination”.
3. Maximum Performance operates a fitness gym and offers personal training services out of its facilities in Port Coquitlam and each of the five complainants worked at the gym and claimed they had not been paid in accordance with the *Act* for all of their working hours. The delegate investigated those complaints and, ultimately, determined that each of the five complainants had a valid claim for unpaid wages. The complainants’ various claims range from \$900 to nearly \$6,100. Maximum Performance appealed each of these awards although it also seemingly acknowledged that it owes some, if not all, of the complainants an unspecified sum of money on account of unpaid wages. In separate reasons for decision, I dismissed Maximum Performance’s appeal of the Corporate Determination. The Corporate Determination now stands as a final order.
4. Mr. Robinson appeals the Section 96 Determination (BC EST File No. 2014A/134) and, in addition, he has applied for an order under section 113 of the *Act* suspending the effect of the Section 96 Determination pending the adjudication of his appeal (BC EST File No. 2014A/135).
5. As noted above, the Section 96 Determination issued against Mr. Robinson is in the same amount as the Corporate Determination. The time for appealing the Section 96 Determination, calculated in accordance with section 122 of the *Act*, expired at 4:30 PM on September 19, 2014. This deadline is set out, along with relevant information relating to appeal procedures, in a text box on the third page of the Section 96 Determination. Mr. Robinson filed his appeal on October 3, 2014, approximately 2 weeks after the appeal period expired. Accordingly, Mr. Robinson now applies for an extension of the appeal period under subsection 109(1)(b) of the *Act*. These reasons for decision deal solely with that application.

FINDINGS AND ANALYSIS

6. Mr. Robinson's appeal documents include the Tribunal's Appeal Form (Form 1) and a number of attachments including a hand printed 15-page memorandum. The attachments are virtually identical to those submitted by Mr. Robinson on behalf of Maximum Performance in the appeal of the Corporate Determination. In his memorandum, Mr. Robinson confirms his status as a director of Maximum Performance. His request for an extension of the appeal period is set out on a separate page of the memorandum headed "Appeal Period Extension" and he claims that he was unable to file a timely appeal because of certain medical issues.
7. I have addressed the evidence relating to Mr. Robinson's medical condition in my reasons relating to the appeal of the Corporate Determination. I did not find this evidence to be particularly cogent or probative. I also note that Mr. Robinson filed an Appeal Form relating to the Corporate Determination by the September 19, 2014, deadline and he has not provided any explanation regarding why he was able to file a timely Appeal Form relating to the Corporate Determination but not with respect to the Section 96 Determination.
8. Mr. Robinson appeals the Section 96 Determination on the ground that the delegate failed to observe the principles of natural justice in making the determination (subsection 112(1)(b)) and on the ground that he has "new evidence" that was not available when the determination was being made (subsection 112(1)(c)). Mr. Robinson, as noted above, concedes that he was a Maximum Performance director when the complainants' unpaid wage claims crystallized. He has not indicated in his appeal documents that any of the various subsection 96(2) defences might possibly apply – and based on my review of the material, there does not appear to be any basis for concluding that any of those defences might apply. Mr. Robinson does not assert that the delegate incorrectly calculated the 2-month wage ceiling as it relates to each of the complainants (although he does say that the complainants have been awarded more wages than they are entitled to receive under the *Act*).
9. With respect to his allegations that the delegate failed to observe the principles of natural justice in making the Section 96 Determination, I note that this ground is based on identical material submitted in the appeal of the Corporate Determination. For the reasons I expressed in my decision relating to the appeal of the Corporate Determination, I find no merit to this ground of appeal.
10. Similarly, Mr. Robinson's "new evidence" argument is identical to that presented in the appeal of the Corporate Determination. In my decision relating to the appeal of the Corporate Determination I concluded that none of the evidence submitted satisfied the *Davies et al.* (BC EST # D171/03) criteria and thus this ground of appeal had no reasonable prospect of succeeding.
11. The delegate appended "Reasons for the Determination" (the "delegate's reasons") and these reasons detail the following:
 - BC Corporate Registry records confirm that Mr. Robinson was the sole director of Maximum Performance during the period spanned by the complainants' unpaid wage claims;
 - the unpaid wage claims for each of the complainants fall within the "2-month" liability ceiling;
 - Mr. Robinson's unwillingness to actively participate in the investigations that resulted in the issuance of the Corporate Determination and Section 96 Determination.
12. In light of the fact that Mr. Robinson has not adequately explained why he failed to file a timely appeal and, in any event, because the appeal has no reasonable prospect of succeeding even if the appeal period were

extended, I am of the view that the application to extend the appeal period must be refused and the Section 96 Determination confirmed.

13. Given my decision to refuse to extend the appeal period, and my concomitant order confirming the Determination, Mr. Robinson's section 113 suspension application must be dismissed because it is now moot.

ORDER

14. Mr. Robinson's application to extend the appeal period is refused. Pursuant to subsections 114(1)(b) and (f) and 115(1)(a) of the *Act*, this appeal is dismissed and the Section 96 Determination is confirmed as issued in the amount of \$15,850.38 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal