

An application for suspension

- by -

Randolph Wright, a Director of
Wright Powerline Services Inc.
("Mr. Wright")

- 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: Shafik Bhalloo

FILE No.: 2013A/89

DATE OF DECISION: February 14, 2014

DECISION

SUBMISSIONS

Nicholas Ellegood

counsel for Randolph Wright, a Director of Wright Powerline Services Inc.

Megan Roberts

on behalf of the Director of Employment Standards

OVERVIEW

1. This is an application made under Section 113 of the *Employment Standards Act* (the “*Act*”) to suspend the determination issued pursuant to Section 96 of the *Act* against Randolph Wright, as a Director of Wright Powerline Services Inc., on November 19, 2013 (the “S. 96 Determination”), pending the adjudication of an appeal.
2. On December 12, 2012, Lindsay Nagle (“Mr. Nagle”) filed a complaint under Section 74 of the *Act*, alleging that Wright Powerline Services Inc. (“WPS”), a company specializing in the service and maintenance of high-voltage power lines, contravened the *Act* by failing to pay him regular wages, compensation for length of service, vacation pay and business costs (the “Complaint”).
3. On August 20, 2013, a delegate of the Director of Employment Standards (the “Director”) conducted a hearing of the Complaint (the “Hearing”). WPS was represented by counsel and Mr. Wright at the Hearing. After the Hearing, on August 30, 2013, the delegate issued a determination against WPS (the “Corporate Determination”) finding wages and interest were owed to Mr. Nagle totalling \$32,033.31 inclusive of interest, and levied administrative penalties against WPS totalling \$1,500.00.
4. The Corporate Determination included a notice to Directors and Officers of WPS, explaining their potential personal liability under the *Act*. The Corporate Determination was sent to WPS by registered mail, with copies to its legal counsel, to its registered and records office, and to Mr. Wright.
5. WPS did not pay the amounts ordered in the Corporate Determination, nor appeal the Corporate Determination within the appeal period which expired on October 7, 2013.
6. On November 19, 2013, the delegate, based on a BC Online Corporate Registry search of WPS made on December 28, 2012, which indicated WPS was active and Mr. Wright was its sole Director, issued the S. 96 Determination against Mr. Wright. The S. 96 Determination held Mr. Wright personally liable for up to two months’ unpaid wages for Mr. Nagle totalling \$17,518.98, inclusive of accrued interest. However, the delegate did not find Mr. Wright personally liable for the administrative penalties as there was insufficient evidence before her to determine Mr. Wright authorized, permitted or acquiesced in the contraventions of WPS.
7. Mr. Wright, through counsel, appeals the S. 96 Determination, alleging that the delegate erred in law and failed to observe the principles of natural justice in making the S. 96 Determination and, furthermore, states that new evidence has become available that was not available at the time the S. 96 Determination was being made (subsections 112(1)(a)(b) and (c) of the *Act*). At this juncture, it is not appropriate for me to engage in a detailed consideration of the merits of the appeal, which I will deal with in a separate decision following this decision.

THE SUSPENSION APPLICATION

8. As indicated, Mr. Wright has requested that the S. 96 Determination be suspended pending the adjudication of an appeal. In terms of submissions in support of his suspension application, I note that Mr. Wright, or his counsel, appears to have incorporated some submissions in the written submissions on the merits of the appeal. From what I can decipher, it appears that counsel is arguing that the suspension of the S. 96 Determination should be ordered by the Tribunal because Mr. Wright is not aware of any steps taken by the Director to enforce the Corporate Determination against WPS, and that such steps should be taken first. Until such steps are taken, counsel submits that the S. 96 Determination should be stayed.
9. Having said this, I note that Section 113(1) of the *Act* affords the Tribunal the legal authority to suspend the effect of a determination pending an appeal. The Tribunal does not, as of right, grant a suspension request but requires the applicant to make a clear and compelling case to the Tribunal that he will suffer serious prejudice if a suspension order is not granted (see *Re: New Westminster (City)*, BC EST # D518/98, reconsideration dismissed, BC EST # D118/99).
10. Further, pursuant to subsection 113(2) of the *Act*, the Tribunal may suspend a determination provided the applicant deposits either the total amount of the determination or a smaller amount that the Tribunal considers adequate in the circumstances of the appeal. Failure to make a compelling case, combined with a failure to deposit funds, will lead to a dismissal of a suspension application (see *Re: 6673538 Canada Inc. (c.o.b. Strauss Herb Co.)*, BC EST # D095/10).
11. In this case, I note the Director does not object to Mr. Wright's request for a suspension on the condition that WPS or Mr. Wright pay to the Director, in trust, pending the appeal of the S.96 Determination, the full balance of wages and interest determined to be owing to Mr. Nagel, together with bailiff fees accrued to date to West Coast Court Bailiffs. The Director's basis for such request is that WPS is no longer operating and the amount determined to be owed has not been paid or collected.
12. I note, however, Mr. Wright has not deposited any amount with the Director, nor has he suggested a smaller amount that the Tribunal might consider adequate in the circumstances of the appeal. I also note that I do not find the merits of the suspension application compelling. While counsel's contention for asking for a suspension of the S.96 Determination is based on the assertion that Mr. Wright is not aware of any steps taken by the Director to enforce the Corporate Determination against WPS, and that such steps should be taken first, the delegate's submissions would suggest otherwise. The delegate's submissions indicate that the Director has commenced collections proceedings against WPS using West Coast Court Bailiffs and there is some costs incurred in employing the collections agent. Whether Mr. Wright is *aware* of the collections steps taken by the Director, in my view, is not a relevant consideration in the suspension application. What is relevant is that steps have been taken by the Director to collect the Corporate Determination but unfortunately to no avail. In the circumstances, I do not find Mr. Wright, or his counsel, to have made out a sufficient case for this Tribunal to exercise its discretion to suspend the S. 96 Determination. As concerns the merits of the appeal, I will more specifically deal with those in a separate decision which will follow this decision.

ORDER

13. The suspension request under Section 113 of the *Act* is denied.

Shafik Bhalloo
Member
Employment Standards Tribunal