

An appeal

- by -

Inderjit Seikhon, Director of Guru Nanak Travel Ltd.  
("Seikhon")

- 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)

**TRIBUNAL MEMBER:** Shafik Bhalloo

**FILE No.:** 2009A/017

**DATE OF DECISION:** April 24, 2009

## DECISION

### SUBMISSIONS

Inderjit Seikhon	on his own behalf
Reena Grewal	on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Inderjit S. Seikhon (“Seikhon”) of a Determination that was issued on January 21, 2009 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Seikhon was a director of Guru Nanak Travel Ltd. (“GNK”), an employer found to have contravened provisions of the *Act*, and was personally liable by operation of Section 96 of the *Act* for an amount of \$4,165.85.
2. Seikhon has appealed the Section 96 Determination on the ground that the Director breached the principles of natural justice.
3. Pursuant to Section 36 of the *Administrative Tribunals Act* (the “*ATA*”), which is incorporated into the *Act* (S.103), and Rule 17 of the Tribunals Rules of Practice and Procedure, the Tribunal may hold any combination of written, electronic and oral hearings. In my view, this appeal can be adjudicated on the basis of the Section 112(5) “record”, the written submissions of the parties and the Reasons for the Determination.

### ISSUE

4. Has Seikhon established that the Director failed to observe principles of natural justice?

### FACTS

5. Mr. Balwant Gill (“Gill”) was an employee of GNK, a travel agency.
6. On April 7, 2008, Gill filed with the Employment Standards Branch a complaint pursuant to Section 74 of the *Act* alleging that GNK contravened the *Act* by failing to pay him regular wages and vacation pay for the period of employment commencing July 1, 2007 and ending October 11, 2007 (the “Complaint”).
7. The delegate of the Director conducted an investigation of the Complaint, which included a fact-finding meeting on September 17, 2008, attended by Seikhon on behalf of GNK.
8. On November 20, 2008, the Director issued a determination (the “Corporate Determination”) finding GNK to have contravened Sections 17, 18, 28 and 58 of the *Act* in respect of the employment of Gill and ordered GNK to pay Gill \$4,488.64 plus interest.
9. In addition, in respect of the contraventions of Sections 17, 18 and 28 of the *Act*, the Corporate Determination imposed three administrative penalties on GNK for \$500.00 each pursuant to Section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”).
10. GNK did not appeal the Corporate Determination nor resolve it by making any payment required under it.

11. On January 21, 2009, the Director issued the Section 96 Determination against Seikhon, after finding that the latter was a director of GNK when wages were earned by Gill or should have been paid by GNK to Gill, issued a Section 96 Determination against Seikhon holding the latter personally liable for unpaid wages to Gill as well as the administrative penalties levied against GNK in the corporate Determination.
12. Seikhon is not challenging the calculation of his personal liability in the Determination in this appeal. To the contrary, Seikhon is concurring with the Determination.

## **ARGUMENT**

### ***Submissions of Seikhon***

13. Seikhon submits that he concurs with the Determination against himself but is unable to comply with the payment ordered therein due to “mitigating circumstances”, namely, his exclusion from GNK’s premises by the Paddas. He apparently needs access to the business premises of GNK to execute a payment to Gill to comply with the Determination.
14. Saeikhon further submits that he has retained lawyers to resolve his shareholder dispute with the Paddas who “hold all the assets of the company”.
15. Seikhon includes with his appeal two letters from his current and former solicitors to the Paddas effectively corroborating his submission that he has a dispute with the Paddas and he has been excluded from the business premises of GNK.

### ***Submissions of the Director***

16. The Director, in refuting the natural justice ground of appeal of Seikhon, argues that the latter was aware of the allegations in the Complaint and provided an opportunity to respond to them. In support of this submission, the Director reviews briefly the history leading to the Corporate Determination and Seikhon’s participation in the Complaint process and the subsequent issuance of both the Corporate Determination as well as the Director’s Determination to Seikhon. I do not find it necessary to reiterate this information here, as Seikhon’s challenge under the natural justice ground of appeal is unsupported with real evidence.
17. The Director also points out that Seikhon concurs with the Determination and that his inability to access the business premises of GNK “does not negate (his) personal liability to pay wages to (Gill) because he was a Director at the time wages were earned and became payable”.
18. The Director further submits that Seikhon has not established any grounds on which the Determination made against him may be successfully appealed and submits, therefore, that the appeal should be denied.

## **ANALYSIS**

19. Subsection 96(1) of the *Act* provides that a person who is a director or officer of a corporation at the time wages of an employee were earned or should have been paid is personally liable for up to two months’ unpaid wages for each employee. Subsection 96(2) exempts a director or officer of a corporation for personal liability if, *inter alia*, the corporation is in receivership or is subject to action under Section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act.

20. In this case, there is no dispute that Gill earned the wages originally ordered in the Corporate Determination during Seikhon's directorship of GNK.
21. According to the Director's submissions, as at March 13, 2009, Seikhon continued to appear as a Director of GNK in the company's materials in the corporate registry.
22. There is also no evidence whatsoever of any formal receivership or statutory insolvency proceedings and therefore the exemptions in Subsection 96(2) do not apply in this case.
23. Further, Seikhon has failed to discharge the burden on him to show that the Director breached the principles of natural justice in making the Determination. It is clear to me that Seikhon's natural justice ground of appeal is no more than a bare assertion without any foundation. The real reason why Seikhon is appealing, as indicated previously, is that he is unable to execute or make the payment ordered in the Determination because (as he states) he is prevented by the Paddas from entering the Company's business premises.
24. While I sympathize with Seikhon's predicament, his business dispute with the Paddas and consequent problems accessing the business premises of GNK does not exempt him from personal liability under the Determination.
25. In my view, as Seikhon has not adduced any evidence to support his natural justice ground of appeal and since he does not qualify under any of the statutory exemptions in Section 96(2) of the *Act*, I find that Seikhon has not established any basis for me to cancel or vary the Director's Determination.

## **ORDER**

26. The appeal is dismissed and the Determination dated January 21, 2009, is confirmed.

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**Shafik Bhalloo**  
**Member**  
**Employment Standards Tribunal**