

An appeal

- by -

Paramjit Singh Chahal a Director of PK Chahal Holdings Ltd.
(“Mr. Chahal”)

- 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: Kenneth Wm. Thornicroft

FILE No.: 2015A/52

DATE OF DECISION: June 12, 2015

DECISION

SUBMISSIONS

Paramjit Singh Chahal

on his own behalf as a Director of PK Chahal Holdings Ltd.

OVERVIEW

1. This is an appeal filed by Paramjit Singh Chahal a Director of PK Chahal Holdings Ltd. (“Mr. Chahal”), pursuant to subsection 112(1)(b) of the *Employment Standards Act* (the “*Act*”), of a determination issued by a delegate of the Director of Employment Standards (the “delegate”) on March 3, 2015. I shall refer to this determination as the “Section 96 Determination” since it was issued against Mr. Chahal in his personal capacity as a director of a business corporation, PK Chahal Holdings Ltd. (“Chahal Holdings”), under section 96 of the *Act*.
2. I am adjudicating this appeal based solely on the written submissions filed by Mr. Chahal. However, I have also reviewed the Section 96 Determination, the delegate’s accompanying “Reasons for the Determination” issued concurrently with the Section 96 Determination on March 3, 2015 (the “delegate’s reasons”), and the complete subsection 112(5) record that was before the delegate.
3. Mr. Chahal’s appeal was filed on April 22, 2015 – nearly two weeks after the statutory appeal period expired (see subsections 112(2) and (3)(a) of the *Act*). Accordingly, Mr. Chahal seeks an extension of the appeal period under subsection 109(1)(b) of the *Act*. In my view, this is not an appropriate case to extend the appeal period and, in any event, the appeal is wholly without merit and should be dismissed under subsections 114(1)(c) and (f) of the *Act*.

BACKGROUND FACTS

4. On May 15, 2014, Prabhjot Singh (“Mr. Singh”) filed an unpaid wage complaint against his former employer, Copper Island Pub Ltd. (“Copper Island”). Mr. Singh claimed that he had been employed as a bartender and was entitled to something slightly in excess of \$29,000 in unpaid wages. On September 23, 2014, a complaint hearing was held regarding Mr. Singh’s unpaid wage claim and on November 21, 2014, the delegate issued a determination and accompanying reasons (I shall refer to this latter determination as the “Corporate Determination”).
5. By way of the Corporate Determination, the delegate awarded Mr. Singh \$12,971.82 on account of unpaid wages earned during the 6-month “wage recovery period” (see section 80) and, in addition, levied six separate \$500 monetary penalties (see section 98) thus bringing the total amount of the Corporate Determination to \$15,971.82. This latter amount was jointly and separately (severally) payable by both Copper Island and Chahal Holdings since the delegate determined that these two firms were “associated employers” under section 95 of the *Act*.
6. The two corporations jointly appealed the Corporate Determination arguing that the delegate erred in law, breached the principles of natural justice, and on the ground that there was new evidence not available when the Corporate Determination was made (see subsections 112(1)(a), (b) and (c) of the *Act*). The same legal counsel represented both appellants in their joint appeal. It is important to note that although legal counsel raised several alleged “errors of law” he did not challenge the delegate’s finding with respect to the application of section 95 of the *Act* (*i.e.*, the “associated employers” provision). By way of reasons for decision issued on

February 18, 2015 (see BC EST # D019/15), Tribunal Member Bhalloo dismissed this latter appeal as having no reasonable prospect of succeeding (see subsection 114(1)(f) of the *Act*). Neither Copper Island nor Chahal Holdings applied to the Tribunal for reconsideration of Member Bhalloo's decision and the time for such an application has now long passed (reconsideration applications must be filed within 30 days after the date of the appeal decision in question).

7. Since the amount due under the Corporate Determination remained unpaid, the delegate issued the Section 96 Determination (along with accompanying reasons) on March 3, 2015. The Section 96 Determination is in the amount of \$9,230.26 representing 2-months' unpaid wages, being the personal liability "ceiling" established by subsection 96(1) of the *Act*. Although corporate directors and officers can also be held personally liable for unpaid monetary penalties under subsection 98(2) of the *Act*, the delegate held that there was "insufficient evidence that Mr. Chahal authorized, permitted or acquiesced in the contravention(s) of [Chahal Holdings]" and, accordingly, held that Mr. Chahal was "not personally liable for the administrative penalty" [*sic*] (delegate's reasons, page R3). I must say that this strikes me as a most curious conclusion in light of the delegate's findings of fact with respect to Mr. Chahal's extensive involvement in the business affairs of the two corporations. However, the correctness of that finding is not an issue in this proceeding.

GROUND OF APPEAL AND APPLICATION TO EXTEND THE APPEAL PERIOD

8. In the present appeal, Mr. Chahal says that the delegate failed to observe the principles of natural justice in making the Section 96 Determination (subsection 112(1)(b)) and that, accordingly, it should be changed or varied. More particularly, he asserts that Mr. Singh "worked for Copper Island Pub Ltd." and that his unpaid wage claim "is totally wrong" and "not right at all"; Mr. Chahal further asserts and that Mr. Singh "has been paid completely for whatever hours he worked for".
9. The deadline for appealing the Section 96 Determination, calculated in accordance with subsections 112(3)(a) and 122(2) of the *Act*, was 4:30 PM on April 10, 2015. Mr. Chahal's Appeal Form was filed with the Tribunal on April 22, 2015, and thus it was filed not quite two weeks after the appeal period expired.
10. The record before me indicates that on April 9, 2015, Mr. Chahal prepared and filed a separate Appeal Form, dated April 2, 2015, in which he identified PK Chahal Holdings Ltd. as the appellant. This form was filed with the Prince George office of the Employment Standards Branch and purported to be an appeal of the *Corporate Determination* based on all three statutory grounds. It should be noted that this form was redundant given that Chahal Holdings had previously unsuccessfully appealed the Corporate Determination. In any event, Chahal Holdings asked that the Corporate Determination be cancelled because Mr. Singh "was not an employee of PK Chahal Holdings Ltd. he worked for Copper Island Pub Ltd. and he was paid in full for all the hours he worked" [*sic*]. Chahal Holdings also asserted that Mr. Singh's "claim regarding his wages is false and he has no evidence". Chahal Holdings asked the Tribunal to "*reconsider* my appeal and cancel all the charges laid on PK Chahal Holdings Ltd. (and again [Mr. Singh] never worked for PK Chahal Holdings Ltd.)" (my *italics*). It may be that Mr. Chahal intended for this April 9th Appeal Form to be an application for reconsideration of the Tribunal's appeal decision issued on February 18, 2015 confirming the Corporate Determination (although a separate "Reconsideration Application Form" is used for this purpose). However, even if that were Mr. Chahal's intent, a reconsideration application must be filed with the Tribunal (not the Employment Standards Branch) and, in any event, although this Appeal Form was later sent to the Tribunal (received on April 20, 2015), it was filed well outside the 30-day time limit governing reconsideration applications and, further, did not raise, even on a *prima facie* basis, any justiciable ground for reconsideration.
11. As noted above, and this is the appeal that is the subject of the present proceedings before me, on April 22, 2015, Mr. Chahal filed an Appeal Form in which he appealed the Section 96 Determination on the

sole ground that the delegate failed to observe the principles of natural justice. This appeal is late – it should have been filed with the Tribunal by no later than April 10, 2015. Mr. Chahal says that he did not file a timely appeal because he “was not aware” of the proper appeal procedures.

12. Thus, as noted at the outset of these reasons, there are two central issues before me, namely, first, whether the appeal period should be extended and, second, whether, in any event, the appeal should be summarily dismissed under one or more of subsections 114(1)(b)(c) or (f) of the *Act*.

FINDINGS AND ANALYSIS

13. In my view, this is not a proper case for extending the appeal period and, in any event, this appeal is wholly without merit. My reasons for so concluding now follow.
14. The Tribunal will consider, when determining whether the appeal period should be extended in a particular case, several factors including: the length of the delay; whether there is a credible and reasonable explanation for having failed to file a timely appeal; whether there is evidence of an ongoing *bona fide* intention to appeal; and whether any respondent party would be seriously prejudiced if the appeal period were extended (see, for example, *Niemisto*, BC EST # D099/96; *Patara Holdings Ltd.*, BC EST # RD053/08).
15. The delay in this case is not excessive. I do not see that Mr. Singh would be seriously prejudiced if the appeal were to be extended given the relatively short duration of the delay (leaving aside the prejudice that Mr. Singh has already suffered as a result of not having been paid for his labour). However, Mr. Chahal has failed to provide a credible explanation for his failure to file a timely appeal. He refers to the fact that he mistakenly filed an appeal with the Prince George office of the Employment Standards Branch (on April 10, 2015) but this Appeal Form purported to be an *application for reconsideration* of the *Corporate Determination*, not an *appeal* of the *Section 96 Determination* (and if Mr. Chahal intended to file a reconsideration application, he filed it with the wrong tribunal, using the wrong procedure, and well after the applicable time limit had expired).
16. I find Mr. Chahal’s assertion that he was “not aware” about how to properly file an appeal to be quite disingenuous given the fact that he instructed counsel regarding the appeal of the *Corporate Determination* and thus should, having participated in that process, have been aware about how to file an appeal. Further, the deadline for filing an appeal, as well as where further information about the appeal process could be found, was clearly set out in a text box at the bottom of the second page of the 2-page *Section 96 Determination*.
17. The presumptive merit of an appeal is also a factor to be taken into account in assessing whether the appeal period should be extended and, of course, I am also considering the merits insofar as determining whether this appeal has any reasonable prospect of succeeding. It is important to note that the same legal counsel jointly represented Copper Island and Chahal Holdings in the appeal relating to the *Corporate Determination*. Legal counsel did not raise an issue with respect to whether the delegate erred in issuing a section 95 “associated employer” declaration and Tribunal Member Bhalloo’s decision confirming the *Corporate Determination*, never having been the subject of a legitimate reconsideration application, now stands as a final order under the principle of *res judicata*.
18. In the present appeal, Mr. Chahal says that the appeal should be allowed because the delegate failed to observe the principles of natural justice but there is nothing in his appeal materials that even remotely speaks to the natural justice issue. Rather, and taking a *very* generous view of his material (see *Triple S Transmission Inc.*, BC EST # D141/03), Mr. Chahal appears to be saying that the delegate erred in law in making the section 95 declaration and, apart from that legal error, failed to properly weigh the evidence before him which

resulted in his issuing a fundamentally incorrect unpaid wage order. The section 95 declaration was not an issue in the appeal of the Corporate Determination and, in any event, so far as I can see, the delegate had more than ample evidence before him to justify making such a declaration – I strongly suspect that this is the reason why legal counsel did not appeal the section 95 declaration. If one or both of the two business corporations wished to appeal the section 95 declaration, they should have included such a ground of appeal in their appeal of the Corporate Determination. As matters now stand, the section 95 declaration is a final order that cannot be challenged by way of a collateral attack in the present appeal of the Section 96 Determination.

19. Similarly, the matter of Mr. Singh's unpaid wage entitlement has now been finally determined as a result of the Tribunal's confirmation of the delegate's determination of his entitlement as set out in the Corporate Determination. The two corporations obviously did not agree with the delegate's unpaid wage calculation and, accordingly, appealed that matter to the Tribunal. This question was directly before Tribunal Member Bhalloo in the appeal of the Corporate Determination and he fully considered the matter and then issued an order that expressly confirmed the delegate's findings with respect to Mr. Singh's unpaid wage entitlement. As previously noted, Tribunal Member Bhalloo's decision was never the subject of a valid reconsideration application and thus it now stands as a final order (see *Neudorf*, BC EST # D076/07).
20. In this appeal, Mr. Chahal does not deny that he was a Chahal Holdings director at the relevant time (indeed, in the record before me, he essentially concedes that he was a director during the relevant time period) nor does he argue that the delegate did not correctly apply the 2-month wage ceiling rule (subsection 96(1) of the *Act*). Mr. Chahal has not raised any of the other defences that are set out in subsection 96(2) of the *Act* and, in any event, it seems crystal clear that none would apply here.
21. In light of the foregoing, I do not think that this is an appropriate case to extend the appeal period and, even if the appeal period were to be extended, the appeal would inevitably be summarily dismissed as being wholly without merit. In my view, it would be an abuse of process to allow this appeal to go forward given that it is so evidently unmeritorious and, to a very large degree, is simply an undisguised attempt to launch a collateral attack on the Corporate Determination after it has already been confirmed via the statutory appeal process.

ORDER

22. The application to extend the appeal period is refused. Pursuant to subsections 114(1)(b), (c) and (f) of the *Act*, this appeal is summarily dismissed. Pursuant to subsection 115(1)(a) of the *Act*, the Section 96 Determination is confirmed as issued in the amount of \$9,230.26 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