

An appeal

- by -

Sukhwinder Kaur Gill

(“Ms. Gill”)

- and -

White Buffalo Restaurant & Bar Inc.

(“White Buffalo”)

- 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/71

DATE OF DECISION: July 7, 2015

DECISION

SUBMISSIONS

Sukhwinder Kaur Gill

on behalf of White Buffalo Restaurant & Bar Inc.

OVERVIEW

1. This is an appeal filed by Sukhwinder Kaur Gill (“Ms. Gill” or the “appellant”) who identified herself as the “appellant” on the Appeal Form that triggered these proceedings. The appeal was filed, on May 13, 2015, under section 112(1)(a) of the *Employment Standards Act* (the “*Act*”) and apparently concerns a Determination issued by a delegate of the Director of Employment Standards (the “delegate”), against White Buffalo Restaurant & Bar Inc. (“White Buffalo”) on April 22, 2015. By way of this Determination, White Buffalo was ordered to pay \$3,741.51 on account of unpaid wages and interest owed to six former employees. This latter amount primarily consists of regular wages and concomitant vacation pay and section 88 interest, but also includes compensation for length of service for one of the six employees. Further, and also by way of the Determination, White Buffalo was assessed \$1,000 reflecting two separate \$500 monetary penalties (see section 98 of the *Act*) for having contravened section 18 of the *Act* (payment of wages after termination of employment) and section 46 of the *Employment Standards Regulation* (failure to produce payroll records on demand).
2. The stated ground of appeal is that the Director’s delegate (see section 117 of the *Act*) erred in law in issuing the Determination. Ms. Gill appended a ½-page typewritten letter to the Appeal Form dated May 13, 2015, in which she stated that: i) the landlord “locked us out of the restaurant” on October 24, 2014 (I presume this precipitated the termination of the restaurant employees who later filed unpaid wage complaints), and that a law firm has been retained “to obtain our information and equipment from the landlord”; ii) two specifically identified employees named in the Determination “never worked for us, this is the first we have hear these names”; and iii) “Therefore, I am filing an appeal to cancel the Determination”.
3. The Determination was appended to Ms. Gill’s Appeal Form and although Ms. Gill is identified in the Determination as a White Buffalo director, the Determination was issued against White Buffalo, rather than against Ms. Gill personally under subsection 96(1) as a White Buffalo director or officer. Although there is nothing in the material before me to indicate that Ms. Gill has been authorized to file this appeal on White Buffalo’s behalf – and, as previously noted, the appeal was actually filed by Ms. Gill in her personal capacity (although she appended the Determination to her Appeal Form) – I will proceed on the assumption that the “indoor management rule” applies and that Ms. Gill has the presumptive authority to act on White Buffalo’s behalf for purposes of appealing the Determination.
4. According to a BC Corporate Registry search contained in the subsection 112(5) “record” before me, White Buffalo is a corporation “not in good standing” with the Registrar and “is in the process of being dissolved” (as of March 9, 2015).
5. There are some further procedural problems with this appeal. First, the Tribunal’s Registry Administrator contacted Ms. Gill by telephone on May 15, 2015, and advised her that the appeal, as constituted, was incomplete. Ms. Gill advised the Registry Administrator to contact “Dave Gill” as he was White Buffalo’s representative and would be dealing with the appeal on the company’s behalf. Harjinder Singh Gill is named as a director in the Determination and a copy of the Determination was mailed to him; however, I am not certain whether “Dave Gill” (“Mr. Gill”) is one and same person as Harjinder Singh Gill.

6. In any event, the Registry Administrator subsequently spoke with Mr. Gill, by telephone, on May 15 and at that time he was advised to file an amended Appeal Form naming White Buffalo as the Appellant and also to obtain and submit the delegate's written reasons for the Determination (see subsection 112(2)(a)(i.1) of the *Act*).
7. On May 27, 2015, the Tribunal's Appeals Manager wrote to Mr. Gill and reiterated to him that the appeal was deficient and that an amended Appeal Form, as well as written reasons for the Determination, were required to be filed. As of May 27, these documents had not been filed with the Tribunal. Mr. Gill confirmed that he would attend to those matters. On June 27, 2015, the Tribunal's Registry Administrator advised me that neither an amended Appeal Form, nor written reasons for the Determination, had been filed with the Tribunal as of that date.

ANALYSIS AND FINDINGS

8. In my view, this appeal must be summarily dismissed. First, the appeal has not been brought in the name of the proper party and despite several requests to have this situation rectified, no such rectification has occurred. Indeed, in my view, the appeal, as it is presently constituted, is a nullity since the present appellant would only be a proper party if the appeal related to a section 96 director/officer determination rather than, as is the case here, an appeal concerning a determination issued against a business corporation. In the latter instance, the proper appellant is the corporation itself.
9. Second, and leaving aside the irregularity regarding the party bringing the appeal, section 112(2) of the *Act* provides that an appeal is not perfected unless, within the statutory appeal period (which, in this case, expired on June 1, 2015), the appellant files a completed appeal form and a copy of the reasons for the determination. I note that the appellant, on her Appeal Form, indicated that she was submitting "The written reasons for the determination" (this box on the form was checked off) but this statement on the Appeal Form is obviously a false statement. With respect to this latter matter, subsections 81(1.1) - (1.3) of the *Act* provide as follows:
 - (1.1) A person named in a determination under subsection (1) may request from the director written reasons for the determination.
 - (1.2) A request under subsection (1.1) must be in writing and delivered to the director within 7 days of the person being served with the copy of the determination under subsection (1).
 - (1.3) On receipt of a request under and in accordance with subsections (1.1) and (1.2), the director must provide the person named in the determination with written reasons for that determination.
10. It would appear that the appellant failed to obtain a copy of the delegate's reasons in accordance with these provisions. In any event, the delegate's reasons for the determination have never been filed with the Tribunal and, that being the case, the present appeal has never been perfected and the time for perfecting the appeal has now expired. The appellant has not applied for an extension of the appeal period under subsection 109(1)(b) of the *Act*.
11. Third, in my view, even if this appeal were properly before me, it has no reasonable prospect of succeeding and must be summarily dismissed under subsection 114(1)(f) of the *Act*. The only basis upon which the Determination might be varied (I note the appellant asks, on the Appeal Form, to have the Determination "cancelled", not "varied") is on the basis that the Determination includes wage awards for two complainants who, according to Ms. Gill, "never worked for us". This is a bald assertion unsupported by any evidence (for example, payroll records, or statements from other employees). The record before me shows that the delegate wrote to White Buffalo on November 4, 2014, advising that, *inter alia*, a complaint had been filed by one of these two employees (Desiree Hodge-Parenteau). However, White Buffalo never responded to this

letter (although specifically requested to do so) to indicate that this complainant was never a White Buffalo employee. I might also add, having reviewed the complaint relating to this individual, that it contains sufficient detail about the employer's operations that one would be hard-pressed to accept that the complaint was a total fabrication. Further, the record also includes a copy of cheque drawn on White Buffalo's bank account, signed by Harjinder Singh Gill, and made payable to this individual and a time record showing her clocking into work under the name "Desiree". As for the other disputed employee, Jessica R. Goes, the record includes her complaint that, as is the case with Ms. Hodge-Parenteau, contains sufficient detail about her employment situation that one could reasonably conclude her complaint was a *bona fide* one.

12. To summarize, in my view, this appeal must be summarily dismissed because: i) the appeal itself is a nullity since it was not brought in the name of a proper party; ii) even if the appeal is a valid appeal, it was never perfected within the statutory appeal period; the appellant has not applied for an extension of the appeal period and, even if such an application had been filed, I do not believe it would succeed; and iii) in any event, the appeal is wholly devoid of merit. Finally, and in light of the aforementioned considerations and the appellant's (and Mr. Gill's) resolute failure to comply with the Tribunal's directions regarding the need to rectify certain procedural deficiencies, I consider this appeal to be frivolous, vexatious or trivial and, consequently, to be an abuse of process.

ORDER

13. Pursuant to subsections 114(1)(b), (c), (e), (f) and (h) of the *Act*, this appeal is dismissed.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal