



An appeal

- by -

John Ramos, a Director and Officer of DBD Westcoast Construction Ltd.

- 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: Carol L. Roberts

FILE No.: 2016A/78

DATE OF DECISION: August 16, 2016

DECISION

SUBMISSIONS

John Ramos on his own behalf as a Director and Officer of DBD Westcoast Construction Ltd.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), John Ramos, a Director and Officer of DBD Westcoast Construction Ltd., (“Mr. Ramos”) has filed an appeal of a Determination issued by a delegate (the “delegate”) of the Director of Employment Standards (the “Director”) on May 11, 2016. In that Determination, the Director found that Mr. Ramos was a director of DBD Westcoast Construction Ltd. (“DBD”) at the time wages owing to Alan Gazo and Justin Wilson were earned or should have been paid. The Director ordered Mr. Ramos to pay the amount of \$4,622.76 representing not more than two months’ outstanding wages per employee, plus accrued interest in the amount of \$149.16 and \$1,000 in administrative penalties.
2. Mr. Ramos appeals the Determination on the grounds that evidence has become available that was not available at the time the Determination was being made.
3. This decision is based on Mr. Ramos’ written submissions, the section 112(5) “record” that was before the delegate at the time the decision was made and the Reasons for the Determination.

FACTS AND ARGUMENT

4. Alan Gazo and Justin Wilson (the “Employees”) filed complaints alleging that DBD had contravened the *Act* in failing to pay them wages and vacation pay.
5. Following an investigation, a delegate of the Director issued a Determination against DBD finding that the Employees were entitled to wages and interest in the amount of \$3,606.76 (the “Corporate Determination”). The Director also imposed two administrative penalties on DBD in the total amount of \$1,000 for contraventions of the *Act*.
6. The March 2, 2016, Determination, which included a notice to directors and officers regarding their personal liability for wages under the *Act*, was sent by registered mail to DBD’s registered and records office as well as to its officers and directors.
7. The appeal period for the Corporate Determination expired April 11, 2016. Mr. Ramos, DBD’s sole director and officer, appealed the Determination on June 20, 2016, the same date he appealed the Director Determination. I have dismissed that appeal. (see *DBD*, BC EST # D105/16)
8. As noted in the Corporate Determination, DBD was originally incorporated on April 8, 2008, and dissolved for its failure to file on July 2, 2012. Mr. Ramos was the sole director and officer. Mr. Ramos restored DBD’s corporate standing effective May 28, 2015. Mr. Ramos was a director between October 20, 2014, and October 28, 2014, when the Employees’ wages were earned or should have been paid.

9. The delegate determined that as a director of DBD, Mr. Ramos was liable for the Employees' unpaid wages, which were for less than a two month period. The delegate also determined that Mr. Ramos, as the sole director as well as the individual responsible for the day to day operations of the business, was personally responsible for the administrative penalties. In arriving at this conclusion, the delegate also noted that Mr. Ramos appeared at the hearing and acknowledged that he had not paid the employees' wages.
10. Mr. Ramos' grounds of appeal are identical to those he submitted in his appeal of the Corporate Determination. Essentially, those are that there is new evidence and that the Determination is wrong. I have not set out those grounds in full for the reasons that follow.

ANALYSIS

11. Section 114(1) of the *Act* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
 - (a) the appeal is not within the jurisdiction of the tribunal;
 - (b) the appeal was not filed within the applicable time limit;
 - (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
 - (d) the appeal was made in bad faith or filed for an improper purpose or motive;
 - (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
 - (f) there is no reasonable prospect that the appeal will succeed;
 - (g) the substance of the appeal has been appropriately dealt with in another proceeding;
 - (h) one or more of the requirements of section 112(2) have not been met.
12. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was being made.
13. The burden is on an appellant to demonstrate a basis for the Tribunal to interfere with the decision. I conclude that Mr. Ramos has not met that burden and dismiss the appeal.

Failure to observe the principles of natural justice

14. Although Mr. Ramos contends that the Director failed to observe the principles of natural justice, there is nothing in the appeal documentation that supports this ground of appeal. Natural justice is a procedural right which includes the right to know the case being made, the right to respond and the right to be heard by an unbiased decision maker. The record confirms that Mr. Ramos participated in the hearing of the original complaints and received the Corporate Determination, along with a notice to the directors and officers, shortly after it was issued in March 2, 2016. Mr. Ramos was therefore aware of his potential liability for wages almost two months before the delegate issued the Director Determination.
15. The Corporate registry demonstrates, and Mr. Ramos does not make any arguments to the contrary, that he was, in fact, the sole corporate director during the time the Employees' wages were earned and should have been paid.

16. Section 96 of the *Act* provides as follows:
- (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
 - (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
 - (a) any liability to an employee under section 63, termination pay or money payable in respect of an individual or group terminations, if the corporation is in receivership,
 - (b) any liability to an employee for wages, if the corporation is subject to an action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency Act
17. There is no evidence, and Mr. Ramos does not contend, that he was not a director when the wages were earned. There is no evidence DBD was in bankruptcy or receivership. I find no error in the delegate's conclusion in this respect.
18. Section 98(2) of the *Act* provides that, if a corporation contravenes a requirement of the *Act* or *Employment Standards Regulation* (the "*Regulation*"), a director or officer who authorizes, permits or acquiesces in the contravention is personally liable to pay the penalty. In addition to being the sole director, Mr. Ramos was the principal of DBD, entering into the employment agreement with Mr. Gazo and Mr. Wilson, and conceded at the hearing that neither had been paid their wages. Consequently, I find no error in the delegate's conclusion that he is personally responsible for the administrative penalties.
19. The appeal is dismissed.

ORDER

20. Pursuant to section 114 of the *Act*, I deny the appeal. Pursuant to section 115 of the *Act*, I order that the Determination, dated May 11, 2016, be confirmed in the amount of \$4,622.76 together with whatever further interest that has accrued under Section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal