

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Jasbir S. Padda, a Director/Officer
of Gateway Pizza & Pasta Ltd.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 98/216

DATE OF DECISION: July 8, 1998

DECISION

OVERVIEW

This is an appeal by Jasbir S. Padda (“Padda”) from a Determination of the Director’s delegate dated March 30, 1998 which determined that Padda was an officer of Gate Way Pizza & Pasta Ltd. (“Gate Way”) and obliged to pay wages, pursuant to s. 96 of the *Employment Standards Act* (“Act”). In a Tribunal Decision dated March 18, 1998 Adjudicator Ib S. Petersen determined that wages in the amount of \$11,151.56 were owing to various employees. In this appeal Padda alleged that the decision of March 18, 1998 was wrongly decided. Padda did not tender any evidence concerning the issue of director’s liability under s. 96 of the *Act*. The Determination was confirmed.

ISSUE TO BE DECIDED

Was Padda an officer of Gate Way Pizza & Pasta Ltd. at the time that the wages became due and owing to the employees?

FACTS

In Determinations made at an earlier time, the Director’s Delegate found that Gateway was required to pay to a group of employees the sum of \$11,511.56. This Determination was appealed. On March 18 1996 Adjudicator Ib Petersen confirmed the Determinations. On March 30, 1998 the Director’s delegate determined that Parmjit S. Padda was a director/officer of Gate Way Pizza & Pasta Ltd. according to information obtained from the Registrar of Companies. The Director’s Delegate applied section 96 of the *Act*, and found Padda liable for two months wages for each of the complainants Kuldeep Gill and Baljit Bains, in the amounts of \$3389.84 and \$4,809.74, respectively.

On April 6, 1998 Parmjit S. Padda filed an appeal. In his written submissions of April 6, 1998, Padda sets out the following reasons for the appeal:

This Determination is wrong because I do not owe any shares in the company. I just sold the business to my brother. He is not educated so I just always help him to succeed in his business.

There were two different claims. But they were mixed together in favour of the complainants Therefore they tailored the information for each to other.

In Last week of Dec 96 there was heavy snow fall and the Pizza Place did not open for full time. But the complainant Chali up the time according to the schedule, which is not right. This matter was never considered.

Mr. Parm Kler never worked for Gateway Pizza His testimony should never had been admitted.

Any untrained employee of a restaurant will never make \$2,000 per month.

I am requesting to have the decision reviewed.

(sic)

By written submission dated April 14, 1996 the Director's delegate advises that Jasbir Padda represented the company at the Tribunal hearings, and stated that he was a part owner of the company along with his brother. His brother is the appellant Parmjit Padda in Tribunal Decision 268/98, issued concurrently with this Decision. Attached to the Director's submission is a copy of a "B.C. Online Companies – Corporation Search". This search indicates that Jasbir S. Padda is the secretary and a director of the company. The search further reveals that the last annual report was filed on August 2, 1997.

Jasbir Padda applied for reconsideration, pursuant to section 116 of the *Act* on April 7, 1998. This application was denied by the Tribunal in a letter decision dated April 9, 1998.

ANALYSIS

The Director's delegate has argued that a director cannot raise the issue of the company's liability in an appeal of a Determination imposing liability on a director under s. 96 of the *Act*. I agree that the only issue in this appeal is whether Padda was a director of the business at the time that the company's liability to the employees was incurred.

The grounds of appeal suggest that Padda was not a shareholder of the business and that he sold the business to his brother Parmjit S. Padda. There was no evidence tendered showing any transfer of shares from Jasbir S. Padda to Parmjit S. Padda, or any proof of a sale of the business. The grounds of appeal allege a continuing involvement of Padda in the day to day operations of Gate Way. The evidence at the Tribunal hearing which fixed

liability on Gate Way, as related by the Director's delegate in her written submission confirms that Padda was involved in the operations of the restaurant. The evidence tendered by the Director's delegate shows that Padda was a director of Gate Way at all material times.

A person can be a director of a company without being a shareholder. A shareholder would not be liable under s. 96 of the Act unless the shareholder could also be characterized as a director or officer of the employer. The evidence amply supports that Padda was, at all material times a director of Gate Way Pizza & Pasta Ltd.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated March 30, 1998 be confirmed.

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Paul Love
Adjudicator
Employment Standards Tribunal