

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 -

Parmjit 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.: 98/215

DATE OF DECISION: July 8, 1998

DECISION

OVERVIEW

This is an appeal by Parmjit 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 the employer was not given equal opportunity to present their claim.

On December 8, 1997, employer brought all the witnesses to the hearing. One of the complainant did not show up and the other complainant needed interpreter and the hearing was adjourned.

Last week of Dec 97, Jan, Feb, Mar 98 two of our key witnesses were out of the country so I was not able to bring them to the Tribunal hearing.

There were two different determinations but they were mixed together in favour of the complainants Therefore they tailored the information for each to other. Not fair for employer.

Mr. Param Kler never worked for Gateway Pizza His testimony should never had been Permitted.

Small Pizza's do not pay \$2,000 to untrained workers and kitchen helpers.

I am preparing a submission to have this appeal reviewed.

I am in the process to see a lawyer to appeal this matter in Supreme Court.
(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 Padda. Attached to the Director's submission is a copy of a "B.C. Online Companies – Corporation Search". This search indicates that Parmjit S. Padda is the president 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 made under s. 96 of the *Act*. I agree that the only issue on this appeal is whether Padda was a director of the company at the time when the company's liability to the employees was incurred.

The grounds of appeal do not set out any challenge to the finding that Padda was a Director of Gate Way. The only evidence tendered on this issue was the evidence tendered by the Director's delegate. This 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