

An Application for Reconsideration

- by -

Harri T. Rauma, a Director of Power Pacific Poles (2006) Inc.  
("Rauma")

- of a Decision issued by -

The Employment Standards Tribunal  
(the "Tribunal")

pursuant to Section 116 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**TRIBUNAL MEMBER:** Robert E. Groves

**FILE No.:** 2010A/22

**DATE OF DECISION:** May 26, 2010

## DECISION

### SUBMISSIONS

Harri Rauma on his own behalf

Andres Barker on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an application for reconsideration of a decision of the Tribunal brought by Harri Rauma (“Rauma”) pursuant to section 116 of the *Employment Standards Act* (the “*Act*”).
2. Rauma challenges a decision of a Member of the Tribunal issued under BC EST # D009/10 and dated January 7, 2010 (the “Original Decision”). The Original Decision considered whether an appeal brought by Rauma under section 112 of the *Act* was timely, concluded that it was not, and declined to extend the stipulated time period. Rauma’s appeal was accordingly dismissed.
3. Pursuant to section 36 of the *Administrative Tribunals Act*, which is incorporated into these proceedings by section 103 of the *Act*, and Rule 26 of the Tribunal’s *Rules of Practice and Procedure*, the Tribunal may hold any combination of written, electronic and oral hearings on applications for reconsideration. No party has requested an oral hearing regarding this application. Both Rauma and the Director have filed written submissions. I have concluded that this application shall be decided having regard to the written materials received, without an oral hearing.

### FACTS

4. The complainants in the proceedings which have led to my considering Rauma’s application for reconsideration were employed by a company called Power Pacific Poles Ltd. (“PPP”). PPP went bankrupt in April 2007, and a receiver was appointed in respect of its affairs the following month. The receiver then negotiated an agreement with another company, Power Pacific Poles (2006) Inc. (“PPP06”), to operate PPP’s manufacturing plant for a further period of time. PPP06 offered the complainants employment pursuant to this arrangement, which they accepted. The complainants continued to work for PPP06 until the doors of the plant were locked in October 2007.
5. The complainants then filed complaints under the *Act* alleging that PPP06 had failed to pay them regular wages, vacation pay, and compensation for length of service. A delegate of the Director of Employment Standards (the “Director”) investigated the complaints and issued a determination dated August 29, 2008 (the “Corporate Determination”). The Corporate Determination found that PPP06 had contravened section 58 of the *Act*, and that the complainants were owed vacation pay, plus interest, in the amount of \$4,289.68. PPP06 was also ordered to pay an administrative penalty of \$500.00.
6. PPP06 appealed the Corporate Determination to the Tribunal, but the appeal was dismissed. A subsequent application for reconsideration was also unsuccessful.
7. PPP06 did not satisfy the obligations imposed in the Corporate Determination. In September 2009 the Director conducted a corporate search of PPP06, and learned from it that Rauma was the sole director of PPP06 during the period when the sums found to be owed to the complainants were earned or should have

been paid. On September 30, 2009, the Director issued a further determination (the “Rauma Determination”) which found that Rauma was personally liable as a director of PPP06 for up to two months’ unpaid wages for each of the complainants, pursuant to section 96 of the *Act*. The sum the Rauma Determination decided that Rauma owed was \$4,425.78, inclusive of interest.

8. Rauma filed his appeal of the Determination on November 9, 2009, a day late. In the circumstances, the Tribunal was obliged to consider whether it should extend Rauma’s time for filing his appeal, pursuant to section 109(1)(b) of the *Act*. As I have stated, the Tribunal declined to do so, and Rauma’s appeal was dismissed. Rauma has now requested that the Tribunal’s Original Decision be reconsidered.

## ISSUE

9. There are two issues which arise on an application for reconsideration of a decision of the Tribunal:
  1. Does the request meet the threshold established by the Tribunal for reconsidering a decision?
  2. If so, should the decision be cancelled or varied or sent back to the original panel, or another panel of the Tribunal?

## ANALYSIS

10. The power of the Tribunal to reconsider one of its decisions arises pursuant to section 116, the relevant portion of which reads as follows:
  - 116(1) On application under subsection (2) or on its own motion, the tribunal may
    - (a) reconsider any order or decision of the tribunal, and
    - (b) confirm, cancel or vary the order or decision or refer the matter back to the original panel or another panel.
11. The reconsideration power is discretionary, and must be exercised with restraint. The attitude of the Tribunal towards applications under section 116 is derived in part from section 2 of the *Act*, which identifies as purposes of the legislation the promotion of fair treatment of employees and employers, and the provision of fair and efficient procedures for resolving disputes over the application and interpretation of the *Act*. It is also derived from a legitimate desire to preserve the integrity of the appeal process described in section 112 of the *Act*. A party should not easily have available to it an avenue for avoiding the consequences of a Tribunal decision with which it is unhappy. Nor should it be entitled to an opportunity to re-argue a case that failed to persuade the Tribunal at first instance. Having regard to these principles the Tribunal has repeatedly asserted that an application for reconsideration will be unsuccessful absent exceptional circumstances, the existence of which must be clearly established by the party seeking to have the Tribunal’s original decision overturned.
12. The Tribunal has adopted a two-stage analysis when considering applications for reconsideration. In the first stage, the Tribunal asks whether the matters raised in the application warrant reconsideration at all. In order for the answer to be “yes” the applicant must raise questions of fact, law, principle or procedure flowing from the original decision which are so important that they demand intervention. If the applicant satisfies this requirement the Tribunal will go on to the second stage of the inquiry, which focuses on the merits of the original decision. When considering the original decision at this second stage, the standard applied is one of correctness: *Zone Construction Inc.*, BC EST # RD053/06.

13. I have concluded that Rauma's application does not warrant reconsideration.
14. As the Tribunal noted in the Original Decision, there are several factors which have been found to inform a decision whether an appeal period should be extended. The overriding principle is whether an injustice would result if an extension of time is not granted (see: *Brett*, BC EST # D161/04).
15. One of the questions that is normally asked when a timeliness issue arises is whether the appellant has presented a strong case – one that might succeed if the appeal is permitted to proceed on its merits. The Tribunal in the Original Decision decided that no such case had been presented by Rauma, and I am not persuaded by anything that Rauma has submitted on this application for reconsideration that in this fundamental respect the Original Decision is in error.
16. Rauma's argument, in essence, is that he was not involved in the day-to-day operations of PPP06, and so he cannot be held responsible for the misconduct of others who may have acted so as to implicate PPP06 in contraventions of the *Act* to which he did not acquiesce.
17. With respect, Rauma's liability under section 96 of the *Act* is not grounded in his actually knowing that contraventions were taking place, that other persons managing the affairs of PPP06 may have been rogues acting oppressively towards him, that he may have been prevented from participating effectively as a director of the company by others, or that he may have merely been an inactive director and exercised no real control over the affairs of PPP06 at the relevant time (see: *Brown*, BC EST # D193/99; *Yong and Craig*, BC EST # D669/01; *Seikhon*, BC EST # D038/09; *Jiang and Liu*, BC EST # D074/06).
18. If Rauma was concerned about the management of the affairs of PPP06, as he alleges, the option available to him which may have assisted him in avoiding personal liability under section 96 was to resign from his position as a director of the company.
19. Section 96(1) says this:

96(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.
20. There are exceptions to a director's personal liability for wages set out in section 96(2). None of the exceptions listed applies here. Apart from these exceptions, a director's liability under section 96(1) appears to be absolute, at least in circumstances where, as here, there is no dispute that the person found personally liable for wages was properly listed in the corporate records as a director of the company at the relevant time.
21. Since Rauma does not dispute that he was a director of PPP06 at the relevant time, his appeal of the Rauma Determination must be limited to a consideration of whether the amount the Rauma Determination has found he is personally liable to pay constitutes no more than up to two months' unpaid wages for each of the complainants (see: *Mitton*, BC EST # D025/06; *Neudorf*, BC EST # D076/07).
22. Rauma, however, takes no issue with the Director's calculations. He submits, instead, that the complainants were not, in fact, employees of PPP06, but were working for other individuals who were managing the affairs of the company during the relevant period, and so, I infer, he takes the position that no wages are owed at all.
23. The difficulty I have with this submission is that it impugns the conclusions drawn by the Director in the Corporate Determination. PPP06 appealed the Corporate Determination to the Tribunal, and its appeal was dismissed, as was a subsequent application for reconsideration. The validity of the Director's findings

concerning the amount of wages owed to the complainants by PPP06 was finally decided at that point. In legal terms, those findings were *res judicata*.

24. In the absence of fraud, collusion, or decisive fresh evidence not previously available, the Director's findings in the Corporate Determination were no longer open to review when the Director issued the subsequent Rauma Determination referencing section 96 (see: *Neudorf, supra*, at paragraph 12). Rauma does suggest that the contraventions resulted from the nefarious conduct of third party individuals operating PPP06 during the relevant time, but his allegations are not supported by any evidence of substance in his submissions. Moreover, there is no evidence offered demonstrating that his concerns could not have been presented to the Director during the proceedings leading to the issuance of the Corporate Determination. That being so, Rauma was not in a position to challenge the Director's findings in the Corporate Determination in the section 96 proceedings before the Director, he could not challenge them on his appeal to the Tribunal, and they are not open to challenge on this application for reconsideration.

### **ORDER**

25. Pursuant to section 116(1)(b) of the *Act*, I order that the Original Decision of the Tribunal, BC EST # D009/10, be confirmed.

---

**Robert E. Groves**  
**Member**  
**Employment Standards Tribunal**