Employment Standards TRIBUNAL

An Application for Reconsideration

- by -

Paul A. Bourassa also known as Paul A. (Alexander) Bourassa a Director and Officer of 0862284 B.C. Ltd.

("Bourassa")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2014A/59

DATE OF DECISION: November 17, 2014

DECISION

SUBMISSIONS

Paul A. Bourassa	on his own behalf as a Director and Officer of 0862284 B.C. Ltd.
Tim Chisholm	on his own behalf
Jonty Davies	on his own behalf
Adele J. Adamic	counsel for the Director of Employment Standards

THE APPLICATION

1. This is an application filed by Paul A. Bourassa ("Bourassa") on April 25, 2014, under section 116 of the *Employment Standards Act* (the "*Act*"), for reconsideration of BC EST # D023/14 issued by Tribunal Member Stevenson on April 8, 2014.

2. It will be helpful to set out some background information at this point. Mr. Bourassa originally filed two appeals concerning two separate, but related, decisions issued by Tribunal Member Stevenson on April 8, 2014 (BC EST # D022/14 and the decision that is the subject of the present application, BC EST # D023/14). The appellant in the first decision was 0862284 B.C. Ltd. and the appellant in the second decision was Mr. Bourassa (a director and officer of 0862284 B.C. Ltd.).

3. The first appeal related to a June 28, 2013, determination issued against 0862284 B.C. Ltd. (the "numbered company") and Fun City Sightseeing Inc. ("Fun City"; jointly, the "employer companies"). The employer companies operated a "hop-on/hop-off" tour bus service in Vancouver under the business name "Fun City Sightseeing" and the complainants and other former employees (42 in total) were variously employed in the business as drivers, tour guides or sales representatives. By way of the determination, these two business corporations were declared to be one employer under section 95 of the *Act* (the "associated" or "common" employer provision) and thus jointly and separately (severally) liable for $50,466.16 in unpaid wages (regular wages, statutory holiday and vacation pay) and section 88 interest owed to the 42 former employees. In addition, and also by way of the June 28, 2013, determination, the two firms were assessed 8 separate $500 monetary penalties under section 98 of the *Act*. Accordingly, the total amount payable under the June 28, 2013, determination was $54,466.16. I shall refer to this determination as the "Corporate Determination".

4. The second appeal, filed by Mr. Paul Bourassa, concerned a July 31, 2013, determination issued against Mr. Bourassa under section 96 of the *Act* (this provision creates a personal director/officer liability for unpaid wages owed by the corporate employer). The delegate determined, based on B.C. Corporate Registry Records, "that Paul Bourassa also known as Paul A. (Alexander) Bourassa was a director and officer [of the numbered company] between April 1, 2012, and October 31, 2012, when the Complainants' wages were earned or should have been paid". Section 96(4) of the *Act* essentially states that if a person is a director or officer of any firm within a group of "associated" entities under section 95, that person is personally liable for up to 2 months' unpaid wages owed to an employee of any one of the associated entities. Since all of the 42 former employees' unpaid wage claims fell below the 2-month threshold, the delegate determined that Mr. Bourassa was liable for $50,466.16 in unpaid wages (the same amount of unpaid wages determined to be

owed under the Corporate Determination). I shall refer to this determination as the "Section 96 Determination".

5. On appeal, and in both instances, Tribunal Member Stevenson issued an order varying the determinations and directing that the Director recalculate the employees' unpaid wage entitlements. Tribunal Member Stevenson's decisions are the subject of two separate applications for reconsideration filed by legal counsel for the Director of Employment Standards (the "Director") and the Tribunal will address those applications in separate reasons for decision.

6. Tribunal Member Stevenson's decision with respect to the Section 96 Determination was issued concurrently with his decision regarding the Corporate Determination. Since all of the issues raised by Mr. Bourassa in his appeal of the Section 96 Determination had already been dismissed by way of Tribunal Member Stevenson's appeal decision relating to the Corporate Determination (and were, in any event, not proper grounds of appeal of a director/officer determination), and in light of the fact that Mr. Bourassa did not contest his status as a director and officer of the numbered company, Tribunal Member Stevenson concluded that the stated grounds of appeal lacked merit. However, Tribunal Member Stevenson varied the Section 96 Determination so that the wage awards set out therein would be consistent with the wage awards under the Corporate Determination. The Director of Employment Standards says that Tribunal Member Stevenson erred in varying the wage awards (essentially, by deleting a number of employees' unpaid wage awards) and this entire matter will be addressed in the Tribunal's reasons for decision relating to the Director's reconsideration application.

7. *This application concerns only the Section 96 Determination.* Mr. Bourassa's application includes the Tribunal's Reconsideration Application Form (Form 2) to which is appended a one-page memorandum dated April 25, 2014, and a number of other documents most of which were part of the record before Tribunal Member Stevenson. In his memorandum, Mr. Bourassa asserts that:

- the delegate's appeal submission dated March 28, 2014 "is not the clear truth" and that this submission should "be disregarded";
- the Tribunal should hold an oral hearing;
- Fun City, as well as another named individual, should be "pursued for employee monies owed"; and
- Mr. Bourassa was, in fact, "threatened" by a former business associate.

8. Mr. Bourassa also filed three separate e-mail communications with the Tribunal dated June 12, July 4, and July 10, 2014. The June 12 e-mail was filed in response to the Director's application for reconsideration (although it does not address the central issues raised by the Director's application) and, to a significant degree, tracks the arguments advanced in his July 4 communication. The July 4 and July 10 communications, on their face, were files as joint submissions relating to both Mr. Bourassa's and the Director's reconsideration applications. These e-mails largely, if not exclusively, address matters that concern the Corporate Determination. Nevertheless, I have reviewed them to determine if there are any relevant submissions relating to the instant application. In these e-mails, while Mr. Bourassa concedes that he was a director and officer of the numbered company, he continues to assert that the numbered company had nothing to do with the tour bus business and, in addition, these e-mails are replete with unsubstantiated *ad hominem* attacks on various individuals including former employees, the delegate and the Director's legal counsel.

9. I am adjudicating this application based on Mr. Bourassa's submissions and, in addition, I have also reviewed the complete appeal record that was before Tribunal Member Stevenson as well as the submissions filed by some of the former employees. My first task is to determine if this application passes the first stage of the two-stage *Milan Holdings* test (*Director of Employment Standards*, BC EST # D313/98).

FINDINGS AND ANALYSIS

10. The Tribunal has a long-standing practice of reviewing reconsideration applications based on the two-stage approach set out in the *Milan Holdings* decision (*Director of Employment Standards*, BC EST # D313/98). Applications that are untimely, or simply ask the Tribunal to "reweigh" evidence in favour of the applicant, or that do not raise significant legal or procedural fairness questions will be summarily dismissed. On the other hand, if the application passes this first step, the Tribunal will proceed to an in-depth analysis of the issues raised by the application.

Should the Application be Considered on its Merits?

11. Although this application is timely, in my view, it falls well short of passing the first *Milan Holdings* threshold. Mr. Bourassa concedes that he was a director and officer of the numbered company when the former employees' unpaid wage claims crystallized. However, he continues to assert that the numbered company was not the employer of record and that the delegate erred in making a section 95 declaration. However, that issue has now been finally determined. Mr. Bourassa, on behalf of the numbered company, filed an appeal of the Corporate Determination and that appeal was dismissed as it related to the section 95 issue. The numbered company has never filed an application for reconsideration of that decision and the time for doing so has now long passed (see the Tribunal's *Rules of Practice and Procedure*, Rule 27).

12. A party is not entitled to a full consideration of their application for reconsideration when the stated basis for the application is a simple statement of disagreement with the result of the appeal decision – the applicant must raise at least some credible argument that calls into question the correctness of the appeal decision.

13. With respect to the matters raised by Mr. Bourassa in the instant application, they simply represent unsubstantiated assertions that the Corporate Determination should be cancelled because neither he, nor the numbered company, had anything to do with the tour bus operation – and he says this despite the overwhelming evidence to the contrary. He says that the delegate was biased against him. This same allegation was raised, and unequivocally rejected, in the appeal relating to the Corporate Determination.

14. Mr. Bourassa now apparently seeks a *de novo* oral hearing so that all of the evidence can be reheard. The delegate proceeded by way of an investigation and, so far as I can tell, Mr. Bourassa never made a serious (or any) application for an oral complaint hearing. He did not seek an oral appeal hearing with respect to either the appeal of the Corporate Determination or the Section 96 Determination and in both appeal decisions Tribunal Member Stevenson noted that there was nothing in the material before him that would suggest an oral appeal hearing should be held. There is nothing in the material before me that would suggest an oral reconsideration hearing is required.

15. Finally, Mr. Bourassa says that the Director should take proceedings against Fun City and another named individual. The short answer to this submission is that the Director *did* take proceedings against Fun City and the Corporate Determination names that corporation as one of the two associated entities – thus, Fun City is equally liable (along with the numbered company) for the former employees' unpaid wages since the effect of a section 95 declaration is to make the associated firms each "jointly and separately liable for payment of the amount stated in a determination" (subsection 95(b)). With respect to the other named individual, if the

Director has reasonable grounds to name that person in a section 96 determination, the Directory may do so but this Tribunal has no statutory authority to *order* the Director to proceed in that fashion. Finally, with respect to the assertion that this person "threatened" Mr. Bourassa, if that indeed occurred, that is a matter for the local police not this Tribunal.

Conclusion

16. In my view, this application fails to pass the first stage of the *Milan Holdings* test and, accordingly, the merits of the application need not be given any further consideration. I would add, simply for the sake of completeness, that I see no merit whatsoever in this application.

ORDER

17. Mr. Bourassa's application for reconsideration of BC EST # D023/14 is refused.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal