

EMPLOYMENT STANDARDS TRIBUNAL

An appeal
pursuant to section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

- by -

Siew Yong Teh

- of a Determination issued by -

The Director of Employment Standards

PANEL: Warren Insell
SUBMISSIONS: Siew Yong Teh, on her own behalf
FILE NUMBER: 2024/072
DATE OF DECISION: November 5, 2024

DECISION

OVERVIEW

1. Siew Yong Teh (“Appellant”), a director of SY Teh Engineering Ltd. (“Employer”), appeals a decision that was made by a delegate of the Director of Employment Standards (“Director”) on May 14, 2024 (“Section 96 Determination”). The Section 96 Determination concluded that the Appellant was a director of the Employer when wages owed to Seokjin Jang (“Employee”) were earned but not paid. Pursuant to section 96 of the *Employment Standards Act (ESA)*, the Appellant was found personally liable to pay the Employee a total of \$877.97 in wages and accrued interest.
2. On June 20, 2024, the Tribunal received the Appellant’s initial submissions for the appeal of the Section 96 Determination. Those submissions included the Appeal Form, in which the Appellant checked off a box indicating that the appeal was based on section 112(1)(b) of the *ESA* (the Director failed to observe the principles of natural justice in making the determination).
3. In correspondence dated June 20, 2024, the Tribunal granted the Appellant additional time to provide their reasons and arguments for the appeal.
4. In correspondence dated July 22, 2024, the Tribunal, among other things, acknowledged having received the appeal, requested the section 112(5) record (“Record”) from the Director, and notified the other parties that submissions on the merits of the appeal and extension request were not being sought from them at that time.
5. The Record was provided to the Tribunal by the Director and the Director confirmed that a copy was delivered to the Appellant and to the Employee. Those parties were provided with the opportunity to object to its completeness. No objection to the completeness of the Record was received from either party.
6. I accept the Record is complete.
7. I have decided that the appeal should be considered under section 114(1) of the *ESA*. Under section 114(1), the Tribunal may dismiss all or part of any appeal for any of the reasons listed in the subsection, which reads:
 - 114 (1) 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.

8. At this stage, I will assess the appeal based on my review of the Record, the Section 96 Determination, the Reasons for the Section 96 Determination, and the appeal submissions. In this appeal, I will consider whether there is any reasonable prospect that the appeal can succeed.

ISSUE

9. The issue before the Tribunal is whether this appeal should be allowed to proceed or be dismissed under section 114(1)(f) of the *ESA*.

BACKGROUND FACTS

10. The Section 96 Determination follows a separate decision against the Employer that was issued on May 19, 2023 (“Corporate Determination”). The Corporate Determination found that the Employer had contravened the *ESA* and owed the Employee, at that time, \$824.53 in wages and accrued interest with an additional \$1,000 in mandatory administrative penalties.

11. The Employer did not appeal the Corporate Determination and the order became final on June 26, 2023. At the time of the Section 96 Determination, the Employer had not yet paid any wages, accrued interest or administrative penalties.

12. The issue before the Director in the Section 96 Determination was whether the Appellant was liable for the unpaid wages, interest and administrative penalties found owing in the Corporate Determination. The Director conducted searches in the BC Registry Services database which confirmed that the Appellant was the only director or officer of the Employer.

13. The Appellant was found to be personally liable for the wages and accrued interest, but the Director concluded that there was “insufficient [sic] that Siew Yong Teh authorized, permitted or acquiesced in the contravention of [the Employer]” and the Appellant was not personally liable for the administrative penalties.

14. Prior to the issuance of the Corporate Determination, the Employer had agreed to pay the Employee a voluntary resolution payment of \$560. The Employer sent the Employee \$560 via E-Transfer, but refused to provide the necessary password to release the funds unless personal information was given by the Employee. The Employee did not provide that information and the Employer did not provide the password or release the funds.

ARGUMENT

15. The Appellant selected a box on the Appeal Form to indicate their ground for appeal was section 112(1)(b) of the *ESA*, namely, that the Director failed to observe the principles of natural justice in making the determination.
16. The Appellant's brief appeal submissions do not challenge their personal liability as a director or make reference to any procedural issues in the Section 96 Determination. Instead, they argue that the Employee must provide the Appellant with personal information in order to receive payment. The Appellant also argues that the Employee had agreed to work without any payment.

ANALYSIS

17. Section 96 of the *ESA* provides as follows:
- 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.
- (2) Despite subsection (1), a person who was a director or an 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 individual or group terminations, if the corporation
- (i) is in receivership, or
- (ii) is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency act,
- (b) [Repealed 2019-27-30.]
- (c) vacation pay that becomes payable after the director or officer of the corporation ceases to hold office, or
- (d) money that remains in an employee's time bank after the director or officer of the corporation ceases to hold office.
- [...]

18. The Tribunal has consistently held that the doctrine of *issue estoppel* limits appellants to certain issues when appealing a decision made under section 96 of the *ESA*: *Abram Neudorf, a Director or Officer of Styro-Mold Manufacturing Ltd.*, BC EST # D076/07. Those limited certain issues are:
- 1) whether the person was a director or officer of the company at the time wages were earned or should have been paid;
 - 2) whether the calculation of the amount determined to be owed by them is correct; and
 - 3) whether the person should not be liable for the penalty, where a penalty has been imposed, on the grounds that they did not authorize, permit or acquiesce in the company's contravention.

19. The Appellant has not raised any arguments or adduced evidence to dispute that they were a director of the Employer at the time that wages were earned or should have been paid to the Employee. A BC Registry Services database search indicates that the Appellant was the only director of the Employer during the relevant time periods.
20. The Appellant argues that the Employee had agreed to conduct work without any payment. The Employer was already found liable for wages in the Corporate Determination and, barring exceptional circumstances that are not met in this case, the Appellant is precluded from arguing the merits of the Corporate Determination in this appeal: *Steinemann (Pacific Western Vinyl Windows & Doors Ltd.)* BC EST # D180/96. The Appellant did not otherwise dispute the calculation of wages owed.
21. No issues were raised or evidence adduced that would indicate the Appellant is exempt from personal liability under section 96(2).
22. The Appellant has not raised any arguments relevant to the limited issues in a section 96 appeal and I find they have provided no reason to challenge their personal liability in the Section 96 Determination.

Natural Justice

23. The Appellant checked off a box on the Appeal Form indicating that the Director failed to observe the principles of natural justice in making the Section 96 Determination.
24. The Appellant did not make any submissions relating to the principles of natural justice or suggest that the Director acted in a way that was procedurally unfair. A party alleging a breach of natural justice must provide some evidence in support of that allegation: *Dusty Investments Inc. d.b.a Honda North*, BC EST #D043/99.
25. I found no evidence in the Record to support a finding that the Appellant was not provided the opportunities required by the principles of natural justice.
26. Accordingly, I find that there is no basis for challenging the Section 96 Determination on natural justice grounds.

CONCLUSION

27. Based on the above, I conclude that there is no reasonable prospect that the appeal will succeed. I dismiss the appeal pursuant to section 114(1)(f) of the *ESA*.

ORDER

28. Pursuant to section 115(1)(a) of the *ESA*, I confirm the Section 96 Determination dated May 14, 2024, together with any interest accrued pursuant to section 88 of the *ESA*.

/S/ Warren Insell

Warren Insell
Member
Employment Standards Tribunal