

Citation: Richard Pemble
2025 BCEST 2

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Richard Pemble

- of a Determination issued by -

The Director of Employment Standards

PANEL: David B. Stevenson
SUBMISSIONS: Cody Reedman, counsel for Richard Pemble
FILE NUMBER: 2024/087
DATE OF DECISION: January 3, 2025

DECISION

OVERVIEW

1. Jonathan Dirnaichner had filed a complaint under section 74 of the *Employment Standards Act* (the *ESA*) alleging Capt'n Crunch Recycling Ltd. ("CC Recycling") and Capt'n Crunch Holdings Ltd. ("CC Holdings") had contravened the *ESA* by failing to pay compensation for length of service.
2. That complaint was investigated and a determination was issued against CC Holdings (the "corporate determination"), finding CC Recycling and CC Holdings were an associated employer under section 95 of the *ESA*, that CC Holdings had contravened Part 8, section 63 of the *ESA*, and that Mr. Dirnaichner was owed wages and interest by CC Holdings in the total amount of \$9,704.32. An administrative penalty in the amount of \$500.00 was imposed.
3. CC Holdings appealed the corporate determination, and that appeal has been dismissed. (see *Capt'n Crunch Holdings Ltd.*, 2025 BCEST 1)
4. The Determination under appeal was issued against Richard Pemble under section 96 of the *ESA* on May 30, 2024, by Stephanie Zegarac, a delegate of the Director of Employment Standards (the "Delegate").
5. The Determination found Mr. Pemble was a director and officer of an employer found to have contravened provisions of the *ESA* at the time wages were earned by or should have been paid to Mr. Dirnaichner and, as such, was personally liable under section 96 of the *ESA* for wages in the amount of \$9,704.32.
6. Mr. Pemble has appealed the Determination under section 112 of the *ESA*, arguing the deciding Delegate erred in law by associating CC Holdings with CC Recycling under section 95 and that new evidence has come available that was not available when the Determination was being made.
7. The appeal submission filed on behalf of Mr. Pemble was received August 16, 2024. It is identical to that filed on behalf of CC Holdings, also received by the Tribunal on August 16, 2024.
8. The section 112(5) record (the "Record") has been provided to all the parties and no objection has been raised to its completeness.
9. The Record includes a BC Registry Services Search conducted online on May 7, 2024, with a currency date of January 26, 2024, indicating that Mr. Pemble was a director and an officer of CC Holdings between June 10, 2019, and February 1, 2023, when Mr. Dirnaichner's wages were earned or should have been paid.
10. Under section 114(1) of the *ESA*, the Tribunal may, without a hearing of any kind, dismiss all or part of an appeal if, among other things, the Tribunal finds no reasonable prospect the appeal will succeed: section 114(1)(f) of the *ESA*.
11. For the reasons that follow, I dismiss this appeal under the above provision.

ISSUES

12. Although Mr. Pemble's submission alleges error of law and seeks to introduce new evidence, the sole issue in this appeal is whether Mr. Pemble has shown a reviewable error in the decision to impose a liability on him under section 96 of the *ESA*.
13. It is a well-established principle that a person challenging a determination issued under section 96 is limited to arguing those issues which arise under that provision: whether the person was a director or officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limits for which a director or officer may be found personally liable; and whether circumstances exist that would relieve the director or officer from personal liability under section 96(2) of the *ESA*, which reads:
 - (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 is in receivership,
...
 - (c) vacation pay that becomes payable after the director or officer 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.
14. Mr. Pemble does not argue any of those issues. Mr. Pemble has presented nothing in his appeal that relates to the matters that can be raised and considered in respect of a challenge to a determination issued under section 96 of the *ESA*.
15. The focus of his appeal is the corporate determination. Mr. Pemble, as a director and officer of a corporation, is precluded from raising and arguing the corporate liability in an appeal of a section 96 determination. The right to appeal and raise arguments against the corporate determination belongs to the corporation and, as indicated above, an appeal by the corporation has been filed and dismissed.
16. For a more complete discussion and analysis on the section 96 liability under the *ESA*, see *Guiying Jiang and Di Liu*, BC EST # D074/06, at paras. 62-86.
17. The material in the Record quite clearly shows: Mr. Pemble was a director and officer of CC Holdings during the time wages were earned by or should have been paid to Mr. Dirnaichner, that the liability imposed on him is within the limits for which a director or officer may be found personally liable under section 96; and there are no circumstances that would relieve Mr. Pemble of personal liability under that provision.
18. In sum, Mr. Pemble has not shown any error in the Determination.

CONCLUSION

19. As I find there is no reasonable prospect this appeal will succeed, the purposes and objects of the *ESA* would not be served by requiring the other parties to respond to it. The appeal is dismissed.

ORDER

20. Pursuant to section 115(1) of the *ESA*, I order the Determination dated May 30, 2024, be confirmed in the amount of \$9,704.32, together with any interest that has accrued under section 88 of the *ESA*.

/s/ David B. Stevenson

David B. Stevenson
Member
Employment Standards Tribunal