

Citation: Jason Kevin Jones
2025 BCEST 8

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Jason Kevin Jones

- of a Determination issued by -

The Director of Employment Standards

PANEL: Brandon Mewhort
SUBMISSIONS: Jason Kevin Jones, on his own behalf
FILE NUMBER: 2024/097
DATE OF DECISION: January 9, 2025

DECISION

OVERVIEW

1. A delegate of the Director of Employment Standards (the “**Delegate**”) issued a determination against Sequoia Stairs Inc. (the “**Employer**”) on June 14, 2024 (the “**Corporate Determination**”), which found wages and interest were owed to a former employee (the “**Complainant**”). The Delegate issued another determination the same day against Jason Kevin Jones who, as a director of the Employer, was found to be personally liable for up to two months’ unpaid wages of the Complainant (the “**Section 96 Determination**”). The Delegate also found that, because Mr. Jones permitted or acquiesced in contraventions of the *ESA*, he was personally liable to pay administrative penalties imposed on the Employer.
2. Mr. Jones appeals the Section 96 Determination under section 112(1) of the *Employment Standards Act (ESA)*. Section 112(1) of the *ESA* provides, in part, that a person who wishes to appeal a determination must deliver to the office of the Tribunal a copy of the Director’s written reasons for the determination, among other things. The only determination attached to the appeal form was the Section 96 Determination. I dismiss this appeal under section 114(1) of the *ESA* because there is no reasonable prospect it will succeed.
3. While the appeal form also lists the Employer as an appellant and the appeal submissions generally relate to the Corporate Determination rather than the Section 96 Determination, the Corporate Determination was not attached to the appeal form so there is no appeal of the Corporate Determination properly before the Tribunal.

THE SECTION 96 DETERMINATION

4. A BC Registry Services Search conducted on April 13, 2023, with a currency date of September 20, 2022, listed Mr. Jones as the sole director of the Employer. A further search conducted on May 31, 2024, with a currency date of January 26, 2024, also listed Mr. Jones as a director and an officer of the Employer as of July 5, 2023. The Delegate therefore found Mr. Jones was a director of the Employer between February 29, 2022, and March 14, 2023, when the Complainant’s wages were earned or should have been paid.
5. Accordingly, in the Section 96 Determination, the Delegate found that Mr. Jones was personally liable for up to two months’ unpaid wages for the Complainant pursuant to section 96 of the *ESA*. Given that two months’ wages for the Complainant was more than the amount found owing to the Complainant in the Corporate Determination, the Delegate determined Mr. Jones was personally liable to the Complainant for the full amount owing in the Corporate Determination. The Delegate also found Mr. Jones permitted or acquiesced in the Employer’s contraventions of the *ESA*, so Mr. Jones was also personally liable to pay the administrative penalties imposed on the Employer.
6. Mr. Jones appeals the Section 96 Determination on the grounds that evidence has become available that was not available at the time the determination was being made. However, all Mr. Jones’ arguments relate to the Employer’s liability under the Corporate Determination, not his own personal liability under the Section 96 Determination. For example, Mr. Jones makes arguments

regarding the employment status of the Complainant, whether the Complainant was terminated or he quit, the calculations for determining the wages owed the Complainant, the hours worked by the Complainant, the period the Complainant was employed, and certain factual findings made in the investigation report for the complaint. Mr. Jones also attached to his submissions various text messages, copies of the Complainant's tax slips, a copy of the complaint, the Complainant's statements of earnings, and screenshots from the Employment Standards website; however, he did not explain why those documents could not have been provided during the investigation of the complaint.

7. Section 96 of the *ESA* is clear that a person who is a director at the time wages of an employee of a corporation were earned or should have been paid is personally liable for up to two months' unpaid wages for each employee. In *Noel-Steeves*, BC EST # D007/16 at para 48, this Tribunal held:

Absent extraordinary circumstances, in an appeal of a director/officer determination issued under subsection 96(1) of the *Act*, the only issues that may be properly raised concern the appellant's status as a director or officer of the employer firm, whether any particular subsection 96(2) defence applies, or whether the individual's personal liability "for up to 2 months' unpaid wages for each employee" has been correctly calculated...

8. Mr. Jones has not raised any of those issues in his appeal. Mr. Jones' submissions relate to the Employer's liability under the Corporate Determination, not his own liability under the Section 96 Determination. The documents attached to the submissions also do not meet the test for fresh evidence – e.g., Mr. Jones provided no explanation for why the documents could not have been provided during the investigation of the complaint, and the documents are not relevant to the issues discussed in *Noel-Steeves*.
9. Section 114(1) of the *ESA* provides that 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, among other things, there is no reasonable prospect the appeal will succeed.
10. In my view, given Mr. Jones has not raised any of the issues discussed in *Noel-Steeves*, he has failed to demonstrate a basis for the Tribunal to interfere with the Section 96 Determination. I therefore dismiss the appeal pursuant to section 114(1)(f) of the *ESA* as there is no reasonable prospect it will succeed.

THE CORPORATE DETERMINATION

11. As discussed above, the appeal form, which was received by the Tribunal on July 22, 2024, also lists the Employer as an appellant and the appeal submissions generally relate to the Corporate Determination, but the Corporate Determination was not attached to the appeal form. The appeal form also included a request for more time to file additional supporting documents in support of the appeal.
12. On July 30, 2024, the Tribunal responded to Mr. Jones by email granting him until August 15, 2024, to file additional supporting documents in support of the appeal. The Tribunal's email stated, in part (emphasis added):

I also note that the Appeal Form states that the appeal is being filed by both you and Sequoia Stairs Inc. If your intent is to also file an appeal of a determination issued against Sequoia Stairs Inc., you must provide a separate appeal submission including a copy of the determination, the Appeal Form, Appellant Contact Information Form, reasons and arguments for the appeal, and any supporting documents. You will also be required to provide a request to extend the appeal period and reasons why your appeal could not be filed by the appeal deadline.

13. A paralegal at a Vancouver law firm then filed additional submissions and documents with the Tribunal on August 15, 2024, on behalf of Mr. Jones. Notably, despite the Tribunal's explicit statement that the Employer must file separate appeal materials if it intends to appeal the Corporate Determination, the Employer has not filed any.

14. Section 112(2) of the *ESA* provides, in part (emphasis added):

A person who wishes to appeal a determination to the tribunal under subsection (1) must, within the appeal period established under subsection (3),

(a) deliver to the office of the tribunal

(i) a written request specifying the grounds on which the appeal is based under subsection (1),

(i.1) a copy of the director's written reasons for the determination, and

...

15. Even though the appeal form listed the Employer as an appellant, a copy of the Corporate Determination was not attached to the appeal form (i.e., a copy of the Corporate Determination was not delivered to the office of the Tribunal within the appeal period). I therefore find that, if the Employer intended to appeal the Corporate Determination, it did not comply with section 112 of the *ESA* and there is no appeal of the Corporate Determination properly before the Tribunal.

ORDER

16. I order that the Section 96 Determination be confirmed pursuant to section 115(1)(a) of the *ESA*.

/S/ Brandon Mewhort

Brandon Mewhort
Member
Employment Standards Tribunal