

An appeal

- by -

Blair Lawrence, a Director or Officer of Dynamic Toy Importers Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

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

TRIBUNAL MEMBER: John M. Orr

FILE No.: 2005A/192

DATE OF DECISION: January 17, 2006

DECISION

OVERVIEW

1. This decision addresses an appeal filed by Blair Lawrence (“Lawrence”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) from a Determination dated September 30, 2005 by the Director of Employment Standards (the “Director”) finding Lawrence personally liable as a director or officer of a British Columbia corporation Dynamic Toy Importers Ltd. (“the Company”).
2. The Director determined (the “corporate determination”) that Dynamic Toy Importers Ltd. and an associated company owed wages to a former bookkeeper. The time for the Company to file an appeal has since expired without an appeal being filed. The Company has not applied for any extension of time to file an appeal. The Company has not paid the amount as determined against it.
3. The Director determined that Blair Lawrence was a director of the Company at the time the wages became due and therefore issued a Determination against him personally pursuant to s.96 of the *Act* on February 25, 2005.
4. Lawrence now appeals the Determination that was made against him as a director or officer of the Company.
5. In the exercise of its authority under section 36 of the *Administrative Tribunals Act* (incorporated in Section 103 of the *Act*) the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ANALYSIS

6. Section 96 of the *Act* provides in part:
 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 two months unpaid wages for each employee.
7. In his appeal Lawrence does not deny his status as a director of the Company or the amount owing but states that Dynamic Toy Importers Ltd did not employ the bookkeeper. He states that a different company, Dynamix Holdings Ltd, was the employer. He appeals his personal director’s liability on the grounds that the company of which he was a director was not the employer and never paid wages to the bookkeeper.
8. This allegation may or may not be true. There is evidence to indicate payments to the bookkeeper from Dynamic Toy Importers Ltd but Lawrence has provided some letters indicating that these may have been in error. However, it is really irrelevant to the appeal which of the two companies paid the wages because the Director determined, in the corporate determination, that the two companies were associated pursuant to section 95 of the *Act*. The Determination was issued against both companies.
9. Prior to the amendments to the *Act* in 2004 the Tribunal ruled that a director of an associated company could not be held liable for wages unpaid to a person employed solely by another associated company,

Icon Laser Centres, Inc. BCEST #D649/01; *Delphi International Academy* [2002] BCEST #D 485/02. However in the 2004 amendments to the *Act* s.96 was amended to add subsection (4) stating:

(4) In this section, “director or officer of a corporation” includes a director or officer of a corporation, firm, syndicate or association that the director treats as one employer under section 95.

10. In this case the Director has treated the two corporations as one employer and found them to be jointly and separately liable. Neither of the two companies appealed the corporate determination or the finding that the companies were associated companies and the time for such an appeal has since expired. Lawrence does not deny that he was a director of the Dynamic Toy Importers Ltd. at the time the wages were earned.
11. It is apparent that the substance of the appeal relates back to the original determination against the Company. As a member of the board of directors it was also within his power to have the Company appeal the original corporate determination but no appeal was filed. Essentially, there is no substantive ground of appeal alleged that would excuse Mr. Lawrence from personal liability as a director for the wages owed by the Company to the bookkeeper. The appeal must be dismissed.

ORDER

12. I order, under section 115 of the *Act*, that the Determination herein is confirmed.

John M. Orr
Member
Employment Standards Tribunal