



An appeal

- by -

Intan Hanneke a Director or Officer of 0888231 B.C. Ltd carrying on business as
RDH Construction
("Mrs. Hanneke")

- 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

TRIBUNAL MEMBER: David B. Stevenson

FILE No.: 2011A/165

DATE OF DECISION: January 26, 2012

DECISION

SUBMISSIONS

Intan Hanneke	on her own behalf
Anthony Osborne	on his own behalf
Amanda Clark Welder	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Intan Hanneke (“Mrs. Hanneke”) of a Determination that was issued on October 19, 2011, by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Mrs. Hanneke was a director of 0888231 B.C. Ltd. carrying on business as RDH Construction (“0888231”), an employer found to have contravened provisions of the *Act*, at the time wages owed were earned or should have been paid and as such was personally liable under Section 96 of the *Act* for an amount of \$1,050.59.
2. In this appeal, Mrs. Hanneke says the Director failed to observe principles of natural justice in making the Determination. She seeks to have the liability imposed against her in the Determination cancelled.
3. The Tribunal has reviewed the appeal, the submissions and the material submitted by the parties, including the Section 112 (5) record filed by the Director, and has determined this appeal can be decided from the material in the file.

ISSUE

4. The issues in this appeal are whether Mrs. Hanneke has shown the Director has committed a reviewable error and that the Determination should be cancelled.

THE FACTS

5. The facts relating to this appeal are brief.
6. Anthony Osborne (“Mr. Osborne”) filed a complaint with the Director, alleging 0888231 had contravened the *Act* by failing to pay all wages owed and making unauthorized deductions from his wages. The Director investigated the complaint and, on April 29, 2011, issued a Determination against 0888231 (the “corporate Determination”). The corporate Determination found 0888231 was liable for wages and interest in the amount of \$1,034.34 and administrative penalties in the amount of \$2000.00.
7. The corporate Determination specifically considered who was Mr. Osborne’s employer for the purposes of the *Act* and found that to be 0888231. The corporate Determination was sent to the registered and records office of 0888231 and to its listed director, Mrs. Hanneke, and to Mr. Ralph Hanneke. No appeal of the corporate Determination was filed.
8. A BC On-line search conducted by the Director on March 16, 2011, showed 0888231 was incorporated on August 16, 2010, and listed Mrs. Hanneke as the sole director of the company. The Director found

Mrs. Hanneke was a director of 0888231 during the time Mr. Osborne's wages were earned or should have been paid.

9. Based on that information, Mrs. Hanneke was found liable under section 96 of the *Act* for the amount of the Determination under appeal in this decision.
10. The section 112(5) Record indicates efforts were made by the Director to notify 0888231 and Mr. and Mrs. Hanneke of the complaint and the investigation. The corporate Determination was successfully delivered to the business address of 0888231. The address being used by Mrs. Hanneke for this appeal is the same address to which the Determination under appeal was delivered.

ARGUMENT

11. Mrs. Hanneke has grounded her appeal as a failure by the Director to observe principles of natural justice, although her argument questions the correctness of the Director's finding in the corporate Determination that 0888231 was Mr. Osborne's employer. While not specifically indicating so, the appeal also raises an argument that the Director erred in law in finding Mr. Ralph Hanneke was a director of 0888231 or had any authority relating to the business of that company. Her initial appeal submission – which is addressed to the Director, not the Tribunal – is comprised of three short paragraphs, saying Mr. Hanneke was not a director or officer of 0888231, had no authority to hire Mr. Osborne for 0888231 and that she never received any mail from the Employment Standards Branch.
12. Both Mr. Osborne and the Director have responded. In his response, Mr. Osborne suggests that Mrs. Hanneke knew he had been hired and was working for Mr. Hanneke. He agrees it is possible Mrs. Hanneke did not personally receive any mail as he says Mr. Hanneke controlled the mail and may not have shown it to her. Other aspects of his response do not address any matter arising in the appeal. Mr. Osborne has also filed an unsolicited e-mail in response to a final reply submitted by Mrs. Hanneke on the appeal. The response does not address any relevant issue in the appeal.
13. The Director's response to the merits of the appeal notes that a director or officer challenging a liability imposed under section 96 of the *Act* is limited to arguing those issues which arise under that provision: whether the person was a director/officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limit for which a director/officer may be found personally liable; and whether circumstances exist that would relieve the director/officer from personal liability under subsection 96(2). The Director says Mrs. Hanneke has not put forward any argument or evidence going to any of these issues.
14. The Director says there were reasonable efforts made to notify Mrs. Hanneke of the investigation and the corporate Determination and has provided an outline of the efforts made to communicate with 0888231 and to notify Mr. and Mrs. Hanneke of the complaint and to seek their input on it. The Director notes the address to which correspondence from the Director was sent is the same address Mrs. Osborne is using on the appeal.
15. A final reply filed by Mrs. Hanneke does little more than elaborate on the points made in the initial appeal submission: that 0888231 never hired Mr. Osborne and that Mr. Hanneke was not a director or officer of 0888231 or in a position to act like one.

ANALYSIS

16. As a result of amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are statutorily limited to those found in Subsection 112(1) of the *Act*, which says:
112. (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*
- (a) *the director erred in law;*
- (b) *the director failed to observe the principles of natural justice in making the determination;*
- (c) *evidence has become available that was not available at the time the determination was made.*
17. It is well established that a person challenging a director/officer Determination is limited to arguing those issues which arise under section 96: whether the person was a director/officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limit for which a director/officer may be found personally liable; and whether circumstances exist that would relieve the director/officer from personal liability under subsection 96(2). The director/officer is precluded from arguing the corporate liability: see *Kerry Steineman, Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST # D180/96. Accordingly, the arguments that question the correctness of the corporate Determinations may not be raised in this appeal.
18. Specifically, Mrs. Hanneke may not question the validity of the Director finding 0888231 was Mr. Osborne's employer. That matter was a finding of fact made in the corporate Determination and was never appealed.
19. As well, Mrs. Hanneke may not argue the correctness of the Director's conclusion about the status of Mr. Hanneke with 0888231. She is confined to addressing her own liability under section 96. Mr. Hanneke has filed his own appeal on the matter of his personal liability under the *Act*.
20. Mrs. Hanneke has not made any argument on those issues that arise under section 96. There can be no question that she was listed as a director of 0888231 at the time the wages of Mr. Osborne were earned and should have been paid. The Determination clearly indicates the amount of the liability imposed on Mrs. Hanneke under section 96 was within the limit of personal liability and there is nothing in the Determination or the material in the file that would indicate circumstances that might exempt Mrs. Hanneke from personal liability.
21. The material in the section 112(5) Record shows the Director made reasonable efforts to provide 0888231 and Mrs. Hanneke with the particulars of the complaint, with an opportunity to present argument and evidence in response to the complaint¹ and with the corporate Determination. A party alleging a denial of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99. The bald assertion made by Mrs. Hanneke, in the face of the material in the section 112(5) Record, is not sufficient to satisfy the burden of persuading the Tribunal there has been a failure to comply with principles of natural justice in making the Determination.

¹ I note in this regard the correspondence from the Director dated April 7, 2011, which was sent by registered and regular mail to Mr. and Mrs. Hanneke, setting out the evidence received by the Director from Mr. Osborne, and the preliminary conclusions reached by the Director on that evidence, inviting a response from them and notifying them of the potential consequences of a Determination, including personal liability on them under section 96.

22. As a result, Mrs. Hanneke has failed to demonstrate any reviewable error in the Determination or provided any basis for cancelling it. The appeal is dismissed.

ORDER

23. Pursuant to section 115 of the *Act*, I order the Determination dated October 19, 2011, be confirmed in the amount of \$1,050.59, together with any interest that has accrued under section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal