

An appeal

- by -

Richard Welsh a Director and Officer of Cantech Manufacturing Ltd.
(“Mr. Welsh”)

- 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: Carol L. Roberts

FILE No.: 2015A/1

DATE OF DECISION: February 27, 2015

DECISION

SUBMISSIONS

Richard Welsh	on his own behalf, as a Director and Officer of Cantech Manufacturing Ltd.
Stacy Beck	on her own behalf
Dallas Pylypow	on his own behalf
Tracy Regier	on behalf of the Director of Employment Standards

OVERVIEW

1. This decision arises out of an appeal by Richard Welsh pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued June 12, 2014. On December 12, 2014, I issued a decision dismissing Mr. Welsh’s appeal of his liability for wages. However, I concluded that the delegate had erred in calculating that liability since Mr. Welsh was not a director for the entire period during which the wages were earned and referred the matter back for re-calculation. (BC EST # D128/14)
2. On December 30, 2014, the delegate issued a letter reporting back on the outcome of her supplementary investigation. The delegate re-calculated Mr. Welsh’s liability for the period May 10, 2013, to June 3, 2013, to be \$50,208.07, representing wages and interest.
3. These reasons are based on the written submissions of Mr. Welsh, the delegate, and two of the fifteen employees.

ARGUMENT

4. Mr. Welsh contends that the delegate erred in calculating his liability, both with respect to the number of days that he was determined to be a director as well as dates for which the wages were unpaid. He also contends that one of the employees was not an employee of Stony Creek during the period of time it was determined he was a director.
5. Mr. Welsh submits that although the delegate determined that he was a director of Cantech Manufacturing Ltd. from May 10 to June 3, she nevertheless calculated 18 working days in that period rather than 17.
6. Mr. Welsh also submits that the delegate erred in finding that he was liable for amounts earned by employees while he was a director. He contends that, under section 96 of the *Act*, he is liable for *unpaid wages* [my emphasis]. He submits that although there were unpaid wages for the period May 10 to June 3, there were only 11 days for which wages were unpaid, not 17. He contends that if the employees are to be paid for the 18 days as calculated by the delegate, they would, in effect, get paid twice for the 11 days they have already been paid for, since the last pay period for which the employees received payment was from May 13 to May 24. He further contends that in the initial Determination, the delegate stated that the unpaid wages were from the period May 27 to June 3.

7. Finally, Mr. Welsh submits that one of the employees for which the delegate calculated wages owing was not an employee for the period of time it was determined he was a director of Cantech Manufacturing Ltd.
8. Mr. Welsh calculated his liability to be \$13,730.40 based on his analysis.
9. Ms. Beck appeared as confused as Mr. Welsh about the calculations, noting that it was unclear whether the calculation of her wages included overtime and the payment of shop supplies she was asked to purchase.
10. Mr. Pylypow also expressed a misunderstanding as to how Mr. Welsh owed the amount calculated.
11. The Director's delegate did not reply to the submissions.

ANALYSIS

12. The difficulties with the referral back decision are apparent. The delegate has calculated the number of working days between May 10 to June 3, 2013, as 18 working days when the number is in fact 17. More seriously however, there are inconsistencies between certain findings in the delegate's first Determination and her referral back. The delegate has not set out in any meaningful or intelligible way those days for which each of the employees remain unpaid and which of those days Mr. Welsh was a director.
13. In light of these difficulties, I have no option but to refer the matter back to the delegate for a second time.

ORDER

14. Pursuant to section 115(1)(b) of the *Act*, I refer the matter back to the delegate for a clarification and re-calculation, if necessary, of Richard Welsh's liability.

Carol L. Roberts
Member
Employment Standards Tribunal