

An appeal

- by -

Teri Tobin, a Director or Officer of DataStar Marine Products Inc.
("Ms. Tobin")

- 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

ADJUDICATOR: John M. Orr

FILE No.: 2000/770

DATE OF DECISION: January 22, 2001

DECISION

OVERVIEW

This is an appeal by Teri Tobin (“Ms. Tobin”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination (File No.98077) dated October 20, 2000 by the Director of Employment Standards (the “Director”). The Determination is made against Ms. Tobin personally as if she were a director or officer of DataStar Marine Products Inc. (“DataStar” or “the company”). Ms. Tobin submits that she never was a director or officer of DataStar during the time that the liability was incurred.

FACTS AND ANALYSIS

The Director issued a Determination against DataStar on July 24 2000 in relation to unpaid wages. The corporate Determination was not appealed and remains unpaid. On October 20, 2000 the Director issued a Determination against Ms. Tobin alleging that as a director or officer she was personally liable for up to two months unpaid wages for each employee. The amount owing under the director’s determination is \$3,569.22.

The evidentiary basis for the finding that Ms. Tobin was a director or officer of the company is inconsistent on the face of the Determination itself. The Director's delegate appears to have relied upon the allegations of the employee despite a corporate record search that showed a Jim Morrison as the sole director and officer of the company.

The delegate also comments that there was evidence confirming that Ms. Tobin “participated in the activities of the company during the time wages were earned”. A vague reference to participation in the company’s activities is far from being a substantial basis for finding that Ms. Tobin was a director or officer of the company. If the delegate had some solid basis for his finding he certainly did not set out that basis in the determination and he made no submission on this appeal. On the delegate’s “findings of fact” alone this determination should not have been issued.

Ms. Tobin denies that she was a director or officer at the material time and has submitted a letter from the solicitor who acts as the registered and records office for the company. The solicitor certifies that Ms. Tobin did not act as a director or officer of the company at the material time.

I am fully satisfied that Ms. Tobin has met the onus of establishing that the determination is in error and therefore it will be cancelled.

ORDER

I order, under Section 115 of the *Act*, that the Determination is cancelled.

JOHN M. ORR

**John M. Orr
Adjudicator
Employment Standards Tribunal**