

An appeal

- by -

Stephen Swift also known as Stephen Glen Swift, a Director or Officer of
Image Power, Inc.

("Swift")

- 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: David B. Stevenson

FILE No.: 2002/569

DATE OF DECISION: January 28, 2003

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Stephen Swift, also known as Stephen Glen Swift, a Director or Officer of Image Power, Inc. (“Swift”) of a Determination that was issued on October 28, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Swift was a Director or Officer of Image Power, Inc., an employer found to have contravened provisions of the *Act*, and, under Section 96 of the *Act*, was ordered to pay an amount of \$9,410.76.

A Determination had been issued against Image Power, Inc. on June 3, 2002. No appeal of that Determination was received by the Tribunal.

The appeal sets out three reasons for the appeal. Two of the reasons challenge the merits of the Determination made against Image Power, Inc. and the third reason says that Image Power, Inc. is making a settlement proposal on the amount found owing. Swift asks that the Determination be canceled.

The Tribunal has decided an oral is not required in order to address this appeal.

ISSUE

The sole issue in this appeal is whether there is any basis on which Swift might be relieved of his liability under Section 96 of the *Act*.

FACTS

As indicated above, a Determination was issued against Image Power, Inc. on June 3, 2002. The time limit for an appeal of that Determination expired on June 26, 2002. No appeal of that Determination was received by the Tribunal.

An on-line search of the Corporate Registry showed that Swift was a director and officer of Image Power, Inc. at the time the unpaid wages were earned.

ARGUMENT AND ANALYSIS

In this appeal, Swift says that a settlement proposal is being made by Image Power, Inc. to the ‘Labour Board’. Presumably, the ‘Labour Board’ is a reference to the Director. Regardless, the possibility of the matter being settled is not a valid ground of appeal and is not a legal basis upon which the Tribunal would exercise its authority under Section 115 to cancel the Determination.

This appeal also challenges the merits of the Determination made against Image Power, Inc. In *Penner and Hauff*, BC EST #D371/96, which referred to, and relied on, two earlier decisions of the Tribunal - *Kerry Steinemann*, BC EST #D180/96 and *Perfecto Mondo Bistro*, BC EST #D205/96, the Tribunal held that a director or officer, in an appeal from a Determination issued under Section 96 of the *Act*, was precluded from seeking to re-litigate the liability of the company and was confined to only those issues

which arise under Section 96 of the *Act*. There are sound legal and policy grounds supporting the position adopted by the Tribunal.

No issue relating to the application or operation of Section 96 of the *Act* has been raised in this appeal and, accordingly, no basis for cancelling or varying the Determination has been demonstrated.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated October 28, 2002 be confirmed in the amount of \$9,410.76, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal