

An appeal

- by -

Rajinder Brad a Director or Officer of Skynet Travel Inc.
carrying on business as General Tours & Travel
(“Brad”)

- 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: David B. Stevenson

FILE No.: 2007A/39

DATE OF DECISION: June 25, 2007

DECISION

SUBMISSIONS

Rajinder Brad	on his own behalf
Greg Brown	on behalf of the Director

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Rajinder Brad, a Director or Officer of Skynet Travel Inc. carrying on business as General Tours & Travel (“Brad”) of a Determination that was issued on March 12, 2007 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Brad was a director or officer of Skynet Travel Inc., an employer found to have contravened provisions of the *Act*, and was personally liable under Section 96 of the *Act* for an amount of \$3,257.59.
2. In this appeal, Brad challenges the extent of the personally liability imposed on him. Brad says he “is not the only one liable for this company” and says for his part, he is only able to pay \$800.00.
3. The Tribunal has decided an oral hearing is not required in order to address this appeal.

ISSUE

4. The issue in this appeal is whether the Director erred in issuing a Determination against Brad for the full amount of the liability of directors/officers of the corporation under Section 96 of the *Act*.

THE FACTS

5. On October 6, 2006 the Director issued a Determination against Skynet Travel Inc. (the “corporate Determination”). The corporate Determination found that Skynet Travel Inc. had contravened the *Act* in respect of the employment of Navjot Johal (“Johal”) and ordered Skynet Travel Inc. to pay wages and interest to Johal in the amount of \$4,755.39. There has been no resolution of the corporate Determination.
6. On March 12, 2007, the Director issued a Determination under Section 96 of the *Act* against Brad. This Determination contains a finding that Brad was a director or officer of Skynet Travel Inc. when wages were earned or should have been paid. Indeed, that conclusion is amply supported by documents found in the Record, which includes several pages of corporate information, and is not challenged in this appeal.
7. The Determination contains a calculation of the personal liability of a director or officer under Section 96(1) of the *Act*. That calculation is not challenged in this appeal.
8. The Record shows there were, at the relevant time, other directors and officers of Skynet Travel Inc.

ARGUMENT AND ANALYSIS

9. Section 96(1) of the *Act* provides:

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 2 months' unpaid wages for each employee.

10. The above provision imposes a personal liability on each director or officer of a corporation of up to two months' wages. The *Act* entitles the Director to collect the wages owed from any director or officer. There is nothing in the provision, or in any other part of the legislation, to support the contention made by Brad in this appeal that the statutory liability of a director or officer must be apportioned, pro-rated or shared.
11. The Tribunal has examined this contention in several decisions and has found that it is not inappropriate for the Director to issue separate Determinations under Section 96 of the *Act* against each director or officer of a corporation for the full amount of the personal liability of any director or officer – which may total more than the amount due to the employees – so long as the Director does not collect more than the actual amount of the unpaid wages due under that provision (see, for example, *Charles Bruce Wood, a Director or Officer of Orion Truck Centre Ltd.*, BCEST #D192/02 (Reconsideration denied in BCEST RD#442/02); *Douglas H. Corbett, a Director or Officer of Alya International Inc.*, BCEST #D165/01; *Anne-Marie Gatringer, a Director or Officer of Alya International Inc. and Alya Systems Inc. (Associated Corporations)*, BCEST #D168/01; and *Roger Charles Morrisey, a Director or Officer of Island Mack Truck Sales Ltd.*, BCEST #D588/01).
12. As this appeal only raises an issue concerning the issuance of the Determination – as opposed to the amount collected – I cannot find the Director has erred in issuing the Determination against Brad for the full amount of his personal liability under the *Act* as a director or officer of Skynet Travel Inc.
13. The appeal is dismissed.

ORDER

14. Pursuant to Section 115 of the *Act*, I order the Determination dated March 12, 2007 be confirmed in the total amount of \$3,257.59.

David B. Stevenson
Member
Employment Standards Tribunal