

An appeal

- by -

James Bridden, a Director or Officer of Skyliner Convenience Enterprises Ltd.  
(“Bridden”)

- 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:** Norma Edelman

**FILE No.:** 2001/703

**DATE OF DECISION:** February 6, 2002

## DECISION

### OVERVIEW

This is an appeal by James Bridden ("Bridden") under Section 112 of the Employment Standards Act (the "Act") of a Determination which was issued against him as a director or officer of the Skyliner Convenience Enterprises Ltd. ("Skyliner") by a delegate of the Director of Employment Standards on October 20, 1999. The Determination requires Bridden to pay \$1091.89 as a result of a finding that he is personally liable for wages owing to three former employees. That liability arises from Section 96 of the Act. The delegate has since advised the Tribunal that two of the three employees have withdrawn their complaints, leaving one Respondent, Andrew Matwick ("Matwick").

### ISSUE TO BE DECIDED

Did the delegate err in determining that Bridden is liable under Section 96 to pay Matwick compensation for length of service?

### FACTS AND ARGUMENTS

On July 6, 1998, the delegate issued a Determination against Skyliner which found that it owed Matwick and 2 other former employees a total of \$1091.89. I shall refer to this Determination as the corporate Determination.

There has been no appeal of the corporate Determination.

On October 20, 1999, the delegate issued the Determination, which is the subject of this appeal. In it, Bridden is found liable as a director or officer of Skyliner for the same amount of wages as set out in the corporate Determination. The deadline to file an appeal of the Determination was November 12, 1999. Bridden filed an appeal on June 27, 2001. In Tribunal Decision BCEST #D535/01 Bridden was granted an extension of the time to file the appeal and now the matter before the Tribunal concerns the merits of Bridden's appeal.

Bridden does not dispute that he is an officer/director of Skyliner, nor does he dispute that the delegate has erred with respect to the calculation of his personal liability. He says that he received notification of the Determinations issued against him and Skyliner in the summer of 2000 at which point he had discussions with 2 of the 3 Respondents and they withdrew their complaints. He contends the complaints were withdrawn as he demonstrated they were fraudulent. Bridden says the delegate gave him the impression the "determination would be dropped". Then, almost one year later a different delegate commenced collections on behalf of Matwick. Bridden wants the opportunity to dispute the delegate's conclusion that Matwick is owed compensation for length of service. He says he did not fire Matwick. Rather, Matwick

quit and he did not subsequently change his mind and ask for his job back. If he had, Bridden says he would have hired him back because he was a good and valuable employee.

Both the delegate and Matwick replied to Bridden's appeal.

The delegate says Bridden is limited to arguing the issue of his personal liability under Section 96 of the Act and he cannot now argue the merits of whether Matwick is entitled to compensation for length of service unless he can show fraud or new evidence that was not previously available. According to the delegate, Bridden's appeal should be dismissed as he has not provided any new evidence, nor has he alleged fraud and he has not denied he was a director or officer of Skyliner. The delegate also provided information to show that the amount of wages owed to Matwick is \$710.77, including interest.

Matwick says he told Bridden in the heat of the moment that he quit. Seconds later he recanted and said he wasn't quitting and that Bridden would have to fire him if that is what he wanted. Bridden replied "too bad, you can't un-quit". Matwick points out that the incident occurred over 3 years ago and it is time for Bridden to compensate him for length of service. He also says that what matters in this case is what happened between him and Bridden and not what happened with the other two complainants.

## ANALYSIS

Section 96(1) of the Act creates a personal liability for corporate officers and directors, as follows:

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 two months unpaid wages for each employee.

The Tribunal has consistently held that an appeal by an officer or director must be limited to the issues that arise under section 96 of the Act -- whether she/he is or was a director or officer of a certain corporation and/or whether the calculation of her/his personal liability is correct. A director or officer is estopped from arguing the merits of the corporate Determination, except when there has been fraud in the issuance of the corporate Determination or where she/he has cogent new evidence not previously available: (Steinemann, BCEST #D180/96, Perfecto Mondo Bistro BCEST #D205/96, and Seacorp Properties Inc. BCEST #D 440/97).

Bridden does not dispute his status as a director or officer of Skyliner at the time wages were earned or should have been paid to Matwick and he does not claim that the calculation of his personal liability is an error. Rather he argues the merits of the liability of the corporation. As noted above, no appeal was filed with respect to the corporate Determination. If Bridden had wished to challenge Matwick's claim to compensation for length of service he could have (but chose not to) caused the company to file the appropriate appeal. Having failed to do so, the principle of issue

estoppel applies and he is not entitled to utilize the present appeal process to reopen the Determination issued against Skyliner. There are some limited exceptions to the issue estoppel principle, none of which applies here. Bridden has not shown evidence of fraud in the issuance of the corporate Determination as it relates to Matwick, nor has he provided any new and relevant evidence that was not in existence at the time the corporate Determination was issued. For the foregoing reasons Bridden's appeal must fail.

### **ORDER**

I order, under Section 115 of the Act, that the Determination dated October 20, 1999 be varied to show that Bridden owes \$710.77 to Matwick, together with any additional interest. The Determination as it relates to the other 2 employees is cancelled.

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**Norma Edelman**  
**Adjudicator**  
**Employment Standards Tribunal**