

BC EST No. D085/98

EMPLOYMENT STANDARDS TRIBUNAL

In the Matter of an Appeal Pursuant to Section 112 of the
Employment Standards Act, R.S.B.C. 1996, c. 113

- by -

WILLIAM R. GAIR
("GAIR")

- of a Determination issued by -

THE DIRECTOR OF EMPLOYMENT STANDARDS
(the "Director")

ADJUDICATOR: Ian Lawson

FILE NO.: 97/850

DATE OF DECISION: February 13, 1998

OVERVIEW

This is an appeal by William R. Gair ("Gair") pursuant to s. 112 of the *Act*. The appeal is from a Determination issued by Beverley Huffey, a delegate of the Director of Employment Standards on November 14, 1997. The Determination imposed personal liability upon Gair for unpaid wages owing to two employees, as Gair was a director or officer of Alex Gair & Sons Ltd. when the wages became payable.

Gair filed an appeal on November 20, 1997. The parties were advised to file any further written submissions by December 16, 1997. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

FACTS

Alex Gair & Sons Ltd. was found liable to pay vacation pay and compensation for length of service to two employees in a Determination issued on November 17, 1997. The amount in question is \$23,239.46, which arose when the company filed an assignment in bankruptcy on April 17, 1997. The company appealed this Determination, and the appeal was dismissed in a decision rendered today (CDET No. /98).

In the Determination under appeal, Gair was found personally liable for two months' wages owing to each employee, in the total amount of \$5,873.50. It is not disputed that Gair was a director and officer of Alex Gair & Sons Ltd. at the time this company filed an assignment in bankruptcy. Gair's submission on this appeal is identical to that filed in support of the company's appeal from the initial Determination (confirmed in CDET No. /98). Unfortunately, this submission does not address the issue of personal liability for the sums in issue, and my companion decision disposes of the arguments on the merits regarding the company's liability for the sums owing.

ISSUE TO BE DECIDED

This appeal requires me to decide whether Gair is personally liable for wages owing by Alex Gair & Sons Ltd.

ANALYSIS

Section 96 of the *Act* reads as follows:

- 96.** (1) A person who was a director or officer of a corporation at the time wages of an employee were earned or should have been

paid is personally liable for up to 2 months' unpaid wages for each employee.

- (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
 - (a) any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,
 - (b) vacation pay that becomes payable after the director or officer ceases to hold office, or
 - (c) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1).

While paragraph (a) of subsection 96(2) does afford protection to Gair for money owing to the employees for compensation for length of service, Gair is liable for the vacation pay as such pay is included in the definition of "wages."

Gair provides no facts or argument that cause me to doubt the Determination in any way. The onus is on the appellant to demonstrate how the Determination under appeal is in error. I find that Gair has failed to meet this onus and I must dismiss his appeal.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Beverley Huffey is correct and the appeal should be dismissed. Pursuant to s. 115 of the *Act*, I order that the Determination dated November 14, 1997 is confirmed with interest payable under section 88 of the *Act*.

Ian Lawson
Adjudicator