

An appeal

- by -

John Wilds A.K.A. John Jeffrey Wilds, a Director or Officer of Technique
Office Furniture Ltd
(“Wilds”)

- 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.: 2002/011

DATE OF DECISION: March 8, 2002

DECISION

OVERVIEW

This is an appeal by John Wilds aka John Jeffrey Wilds ("Wilds") 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 Technique Office Furniture Ltd. ("Technique") by a delegate of the Director of Employment Standards on December 19, 2001. The Determination requires Wilds to pay \$1064.15 as a result of a finding that he is personally liable for wages owing to Yvon Landry ("Landry"). That liability arises from Section 96 of the *Act*.

ISSUE TO BE DECIDED

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

FACTS AND ARGUMENTS

On October 18, 2001, the delegate issued a Determination against Technique which found that it owed Landry \$1055.00 including interest to that date. I shall refer to this Determination as the corporate Determination.

There has been no appeal of the corporate Determination.

On December 19, 2001, the delegate issued the Determination which is the subject of this appeal. In it, Wilds is found liable as a director or officer of Technique for \$1064.15, which is the same amount of wages as set out in the corporate Determination plus some additional interest.

In his appeal Wilds does not dispute that he is an officer/director of Technique, nor does he dispute that the delegate has erred with respect to the calculation of his personal liability. Rather, he argues that Landry is not owed compensation for length of service because he was dismissed for just cause. Specifically Wilds said that Landry, among other things, used the company vehicle without permission and was responsible for several accidents. Wilds also says the Determination should be set aside because of a small claims action between Technique and Landry.

Both the delegate and Landry were invited to reply to the appeal. Only the delegate replied and she said Wilds is limited to arguing whether he was a director or officer at the time wages were earned or should have been paid to Landry and whether the calculation of his personal liability is correct. He cannot now argue the merits of whether Landry is entitled to compensation for length of service. According to the delegate, Wilds' appeal should be dismissed as he does not dispute that he was an officer or director, nor does he claim the calculation is in excess of his liability under Section 96 of the *Act*.

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*, BC EST # D180/96, *Perfecto Mondo Bistro* BC EST # D205/96, and *Seacorp Properties Inc.* BC EST # D440/97).

Wilds does not dispute his status as a director or officer of *Technique* at the time wages were earned or should have been paid to Landry 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 Wilds' had wished to challenge Landry'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 *Technique*. There are some limited exceptions to the issue estoppel principle, none of which applies here. Wilds has not shown evidence of fraud in the issuance of the corporate Determination as it relates to Landry, nor has he provided any new and relevant evidence that was not in existence at the time the corporate Determination was issued.

With regards to the small claims action, the Tribunal has no jurisdiction to set aside a Determination because an Appellant employer has commenced some court action against the employee.

For the above reasons, Wilds' appeal must fail.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated December 19, 2001 be confirmed to show that Wilds owes \$1064.15 to Landry, together with any additional interest.

Norma Edelman
Adjudicator
Employment Standards Tribunal