

An appeal

- by -

Ken Yamamoto, a Director and Officer of Diemaster Specialty Boxes Ltd.
(“Yamamoto”)

- 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: Carol L. Roberts

FILE No.: 2010A/106

DATE OF DECISION: September 15, 2010

DECISION

SUBMISSIONS

Ken Yamamoto	on his own behalf
Victor Lee	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Ken Yamamoto, a Director and Officer of Diemaster Specialty Boxes Ltd., pursuant to Section 112 of the *Employment Standards Act* (“the *Act*”), against a Determination of the Director of Employment Standards (“the Director”) issued June 21, 2010.
2. Sharon McGregor was employed by Diemaster Specialty Boxes Ltd. (“DSB”) from July 12, 2008, until December 12, 2008. When DSB was unable to meet its payroll obligations, Ms. McGregor asked to be laid off and then filed a complaint alleging that DSB had contravened the *Act* in failing to pay her regular wages, vacation pay, statutory holiday pay and compensation for length of service. Following an investigation into Ms. McGregor’s complaint, the Director’s delegate determined that Ms. McGregor was entitled to wages and accrued interest in the total amount of \$22,593.85. The delegate also imposed an administrative penalty in the amount of \$500 for the contravention, pursuant to section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”).
3. The Determination was sent to DSB with copies to the registered and records office, and to the directors and officers together with a notice setting out their personal liability under the *Act*. DSB’s appeal period expired on May 25, 2010.
4. A March 12, 2009, corporate search disclosed that Mr. Yamamoto was a director and officer of DSB between June 16, 2008, and December 12, 2008. On June 21, 2010, when the Determination remained unsatisfied, the Director’s delegate issued a Director Determination against Mr. Yamamoto in the amount of \$6,123.22, representing two months of Ms. McGregor’s unpaid wages.
5. Mr. Yamamoto contends that the delegate failed to comply with the principles of natural justice in finding him responsible for Ms. McGregor’s wages.
6. This decision is based on the section 112(5) “record”, the submissions of the parties and the Reasons for the Determination.

ISSUE

7. Whether or not the delegate erred in finding Mr. Yamamoto personally liable for Ms. McGregor’s unpaid wages.

FACTS AND ARGUMENT

8. DSB is a company incorporated in British Columbia. Mr. Yamamoto was, at all material times, a director and officer of DSB. Accordingly, the delegate determined that Mr. Yamamoto was personally liable for up to two months of Ms. McGregor’s wages. The delegate further determined that because there was no evidence

Mr. Yamamoto authorised, permitted or acquiesced in DSB's contravention, he was not personally responsible for the administrative penalty.

9. Mr. Yamamoto says that because of personal health issues, he did not return to work at DSB following surgery in August 2006. He relies on the delegate's conclusion that he did not authorize, permit or acquiesce in the company's contravention as grounds for his argument that he should not be liable for the unpaid wages.
10. The delegate submits that although Mr. Yamamoto did not participate in the contravention of the *Act*, he is still liable for unpaid wages by virtue of his position as a director of the company. The delegate seeks to have the Determination confirmed.

ANALYSIS

11. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - the director erred in law
 - the director failed to observe the principles of natural justice in making the determination; or
 - evidence has become available that was not available at the time the determination was being made
12. Mr. Yamamoto has the burden of showing, on persuasive and compelling evidence that the delegate failed to observe the principles of natural justice. A disagreement with the result is not a basis for an appeal.

Natural Justice

13. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker.
14. Mr. Yamamoto's appeal submission does not disclose any basis for this ground of appeal and there is no evidence Mr. Yamamoto was not notified of the claim or given the right to respond to it. I dismiss the appeal on this ground.
15. Mr. Yamamoto contends that because he was not present at DSB during the time Ms. McGregor earned her wages, he ought not be liable for those wages. Although a disagreement with the result is not a basis for an appeal, I will nevertheless address Mr. Yamamoto's argument.
16. Section 96 of the *Act* provides as follows:

96 (1) 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.

17. There is no dispute that Mr. Yamamoto was a director of DSB. It is by virtue of this position that he is liable. His knowledge, acquiescence or permission, or lack thereof, is simply not relevant to a finding of personal liability.
18. Therefore, I find no error in the delegate's conclusion and dismiss the appeal.

ORDER

- ¹⁹. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated June 21, 2010, be confirmed, together with whatever interest may have accrued since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal