

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 -

Stanley H. Yoshioka
(" Yoshioka ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 2000/022

DATE OF DECISION: March 17, 2000

DECISION

OVERVIEW

This is an appeal filed by Stanley H. Yoshioka (“Yoshioka”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 16th, 1999 under file number ER 18-486 (the “Determination”). The Director’s delegate determined, pursuant to section 96 of the *Act*, that Yoshioka was a director and officer of both Agvale Insulation Ltd. and Agvale Industries Ltd. and, as such, was personally liable for certain unpaid wages earned by two former Agvale employees.

In a previous determination, issued on November 16th, 1999, Agvale Insulation Ltd. and Agvale Industries Ltd. were declared to be “associated corporations” as defined by section 95 of the *Act* and, accordingly, were jointly and separately liable for a total of \$8,800.61 in unpaid wages (including compensation for length of service) and interest payable to two former employees, Terry L. Crooks and Peter Bergen. I shall refer to this latter determination as the “Corporate Determination”.

Agvale Insulation Ltd. was adjudged to be bankrupt on October 26th, 1999; its licensed trustee in bankruptcy, Campbell Saunders Ltd., has never appealed the Corporate Determination. The current appellant, Yoshioka, purported to appeal the Corporate Determination on behalf of Agvale Industries Ltd. (which continues, I understand, to be an active business enterprise) but that appeal was filed after the statutory appeal period had expired and Agvale Industries Ltd.’s application for an extension of the appeal period was refused--see B.C.E.S.T. Decision No. D113/00, issued March 7th, 2000) and thus the Corporate Determination now stands as a final order as against both Agvale firms.

By way of the Determination now under appeal before me, Yoshioka has been ordered to pay \$5,466.68 in unpaid wages and interest to Messrs. Crooks (\$3,877.79) and Bergen (\$1,588.89). These latter amounts are within the 2-month wage liability “ceiling” set out in section 96(1) of the *Act*. It should be noted that neither amount reflects compensation for length of service; rather in each case, the amounts include only regular wages, vacation pay, interest and, for Bergen only, unpaid “banked” overtime.

GROUND OF APPEAL

In his appeal documents, Yoshioka challenges the delegate’s finding in the Corporate Determination that the two “Agvale” firms are associated and asserts: “I state that the two companies are not associated, and that Agvale Insulation filed for bankruptcy, therefore as a director, I am not liable for the unpaid wages of the employees.”

ANALYSIS

Whether or not the two “Agvale” firms were properly declared to be “associated” is not an issue that can be properly addressed in the present appeal proceedings (see *e.g.*, *Perfekto Mondo Bistro Corporation*, B.C.E.S.T. Decision No. D205/96). That latter question can only be addressed in an appeal of the Corporate Determination. As matters now stand, the “section 95 issue” (*i.e.*, whether the two firms are “associated”) has been finally determined (subject only to any contrary ruling that might be issued following reconsideration or judicial review). I might add, in any event, that there was ample evidence before the delegate upon which she could reasonably conclude that the two firms were “associated”.

The issues before me are limited to whether or not Yoshioka was properly found to be a director or officer of one or both of the two firms in question and, in addition, whether any of the various defences set out in section 96 applies.

It is clear that Yoshioka was an officer/director of both firms when the complainants’ wages were earned or became payable--indeed, Yoshioka does not even contest this point in his appeal documents. The amounts ordered to be paid by Yoshioka do not exceed the 2-month wage ceiling (once again, Yoshioka does not make any assertion to the contrary) and, finally, none of the section 96(2) defences applies. On this latter point, Yoshioka seemingly raises a section 96(2)(a) defence, however, as noted above, the amounts ordered to be paid by way of the instant Determination do not include any monies on account of compensation for length of service and, thus, the section 96(2)(a) defence has no application whatsoever.

ORDER

Pursuant to sections 114(1)(c) and 115 of the *Act*, I order that this appeal be dismissed and that the Determination be confirmed as issued in the amount of **\$5,466.68**, together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal