

An appeal

- by -

Ryan Bracewell a Director or Officer of Aximech Technologies Corp.
(“Mr. Bracewell”)

- 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: David B. Stevenson

FILE No.: 2014A/130

DATE OF DECISION: December 12, 2014

DECISION

SUBMISSIONS

Ryan Bracewell on his own behalf, as a Director or Officer of Aximech Technologies Corp.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Ryan Bracewell (“Mr. Bracewell”), a Director or Officer of Aximech Technologies Corp., has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on August 19, 2014.
2. The Determination concluded that Mr. Bracewell was a director and officer of Aximech Technologies Corp. (“Aximech”), an employer found to have contravened provisions of the *Act*, at the time wages owed were earned or should have been paid to Christopher Gonzales (“Mr. Gonzales”) and as such was personally liable under section 96 of the *Act* for an amount of \$2,468.90.
3. In this appeal, Mr. Bracewell alleges the Director erred in law in making the Determination against Aximech and submits evidence has become available that was not available when that Determination was being made.
4. The appeal was filed late.
5. I have decided this appeal is an appropriate case for consideration under section 114 of the *Act*. At this stage, I am assessing this appeal based solely on the Determination, the appeal and written submission made by Mr. Bracewell and my review of the section 112(5) “record” that was before the Director when the Determination was being made. Under section 114 of the *Act*, the Tribunal has discretion to dismiss all or part of an appeal, without a hearing of any kind, for any of the reasons listed in subsection 114(1), which states:
 - 114 (1) *At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of the appeal if the tribunal determines that any of the following apply:*
 - (a) *the appeal is not within the jurisdiction of the tribunal;*
 - (b) *the appeal was not filed within the applicable time limit;*
 - (c) *the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;*
 - (d) *the appeal was made in bad faith or filed for an improper purpose or motive;*
 - (e) *the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;*
 - (f) *there is no reasonable prospect the appeal will succeed;*
 - (g) *the substance of the appeal has been appropriately dealt with in another proceeding;*
 - (h) *one or more of the requirements of section 112(2) have not been met.*
6. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1), Mr. Gonzales will, and the Director may, be invited to file further submissions. On the other hand, if it is found the appeal is not meritorious, it will be dismissed under section 114(1) of the *Act*.

ISSUE

7. The issue to be considered at this stage of the proceeding is whether the appeal should be dismissed under section 114 of the *Act*.

THE FACTS

8. The facts relating to this appeal are brief.
9. Mr. Gonzales filed a complaint with the Director alleging Aximech had contravened the *Act* by failing to pay him all wages owed. The Director investigated the complaint and, on August 13, 2014, issued a Determination against Aximech (“the corporate determination”) which found Aximech liable for wages to Mr. Gonzales in the amount of \$2,468.90. The Director also imposed administrative penalties on Aximech in the amount of \$1,500.00. The corporate determination was sent by registered and regular mail to Aximech, with a copy to Mr. Bracewell. The corporate determination included notice to directors and officers of their personal liability under the *Act*.
10. Aximech appealed the corporate determination. The appeal was dismissed: see BC EST # D126/14.
11. A BC On-line search conducted by the Director on June 26, 2014, showed Aximech was incorporated on February 16, 2009. The information in the search was current to February 16, 2014. Mr. Bracewell was listed as the sole director and officer of Aximech. The Director found Mr. Bracewell remained a director and officer of Aximech through the period April 28 to June 18, 2014, which is the period during which Mr. Gonzales’ wages were earned or should have been paid.
12. Based on the information acquired and the findings made, the Director concluded Mr. Bracewell was liable under section 96 of the *Act* for the amount of the Determination being addressed in this decision. Mr. Bracewell was not found liable for the administrative penalties imposed on Aximech.

ARGUMENT

13. The appeal does not specifically address Mr. Bracewell’s personal liability as a director and officer of Aximech under section 96 of the *Act*, but rather repeats the arguments made in the appeal of the corporate determination. It is unnecessary to review the arguments made against the corporate determination in this appeal. That review was conducted in the decision on the appeal of the corporate determination.
14. Mr. Bracewell does not challenge the Director’s finding that he was a director or officer of Aximech when the wages of Mr. Gonzales were earned or should have been paid; nor does he argue the amount found owing exceeds the limit for personal liability of a director or officer under section 96 or that the circumstances described in section 96(2) apply to relieve him from personal liability.

ANALYSIS

15. As a result of amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are statutorily limited to those found in subsection 112(1) of the *Act*, which says:

112 (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*

(a) *the director erred in law:*

- (b) *the director failed to observe the principles of natural justice in making the determination;*
- (c) *evidence has become available that was not available at the time the determination was being made.*

16. There are two aspects to this appeal that compel its dismissal. The first relates to the effect of the decision on the appeal of the corporate determination. The second relates to the allowable scope of an appeal of a section 96 Determination. The two are related.
17. On the first matter, I have already noted this appeal is a mirror of the appeal by Aximech of the corporate determination. All of the issues raised in this appeal were decided in BC EST # D126/14.
18. Second, it is well established that a person challenging a director/officer Determination is limited to arguing those issues which arise under section 96: whether the person was a director/officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limit for which a director/officer may be found personally liable; and whether circumstances exist that would relieve the director/officer from personal liability under subsection 96(2). The director/officer is precluded from arguing the corporate liability: see *Kerry Steineman, Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST # D180/96. Accordingly, the arguments that question the correctness of the corporate determination may not be raised in this appeal.
19. Specifically, Mr. Bracewell may not question the validity of the Director finding Aximech is liable for wages owing to Mr. Gonzales.
20. As noted above, Mr. Bracewell does not argue the correctness of the Director's conclusion about his status as a director and officer of Aximech.
21. There is no possibility this appeal can succeed and it is dismissed under section 114(1)(f).
22. I need not address the request to extend the appeal period.

ORDER

23. Pursuant to section 115 of the *Act*, I order the Determination dated August 19, 2014, be confirmed in the amount of \$2,468.90, together with any interest that has accrued under section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal