

An appeal

- by -

John George Hazeldine, also known as Jack Hazeldine,
a Director or Officer of Hazeldine Printing Ltd.

("Hazeldine")

- 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: David B. Stevenson

FILE No.: 2001/128

DATE OF DECISION: April 29, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by John George Hazeldine, also known as Jack Hazeldine, a Director or Officer of Hazeldine Printing Ltd. (“Hazeldine”) of a decision of the Director of Employment Standards (the “Director”) dated January 19, 2001 (the “director/officer Determination”). The director/officer Determination concluded that Hazeldine, as a Director or Officer of Hazeldine Printing Ltd., was liable under Section 96 of the *Act* in an amount of \$242,641.63. The director/officer Determination covered amounts found to be owing under the *Act* to 54 employees. A corporate Determination had been issued on September 28, 2000. The corporate Determination was not appealed.

This appeal, which was filed with the Tribunal on February 12, 2001, alleged a denial of natural justice by the Director, and included concerns about the manner in which the amounts owed were calculated by the Director. Hazeldine asked for the matter to be referred back to the Director for re-calculation and to be involved in that re-calculation.

In April, 2001, the Tribunal assigned the file to a Settlement Officer, and with his assistance, the claims of 52 of the 54 employees included in the corporate and director/officer Determinations were settled. This decision addresses the claims of the two employees who were unable to settle their claims, Robert S. Hazeldine and Jim Burns.

ISSUE

The issue in this appeal is whether Hazeldine has shown the director/officer Determination was wrong in a manner that justifies the intervention of the Tribunal under Section 115 of the *Act* to cancel or vary the Determination, or to refer it back to the Director.

FACTS

The relevant findings of fact are set out in the following excerpts from the director/officer Determination:

I have conducted an investigation of complaints under the *Employment Standards Act* as a result of the bankruptcy of Hazeldine Printing Ltd. That investigation resulted in a Determination being issued against Hazeldine Printing Ltd. on September 28, 2000 in the amount of \$509,523.51. That determination was not appealed. A copy of that Determination is attached.

Based on the evidence available from the Registrar of Companies, you were a Director or Officer of this company at the time these wages were earned or should have been paid.

...

As a Director you are personally liable for up to 2 months’ unpaid wages for each employee.

Conclusion

I have determined that the employees of Hazeldine Printing Ltd. are entitled to \$509,523.51. The liability of John George Hazeldine as a director and officer is \$242,641.43 based on the two months maximum, as calculated in the attachments.

The attachment referred to was laid out to show, for unionized employees (of which Jim Burns was one), the wage rate, hours of work, the 2 months maximum, 'Cdet total', the amount of compensation for length of service, vacation pay on length of service compensation, a subtotal and the 'Director's liability', and for the non-union employees (of which Robert S. Hazeldine was one), the 2 months maximum, 'Cdet total', the amount of compensation for length of service, vacation pay on length of service compensation, a subtotal and the 'Director's liability'. The corporate Determination and, consequently, the director/officer Determination was prepared from information provided by the Trustee in Bankruptcy, who, following the bankruptcy of the company, assumed control of the bankrupt company's records. Hazeldine was not directly involved in the calculation of the amounts owed.

In the initial reply by the Director to the appeal, which is dated February 14, 2001, it was noted that Hazeldine had received the corporate Determination on or about October 21, 2000. On December 27, he communicated with the Director outlining areas of concern. The Director's submission indicated that Hazeldine was given two opportunities to provide information on the calculations for the director/officer Determination prior to it being issued and did not do so. In response, counsel for Hazeldine says he had no opportunity to appeal the corporate Determination. As a matter of law, however, Hazeldine had no authority to appeal the corporate Determination in any event, see *Glen Fyfe (as agent for Canadian Neon Ltd.)*, BC EST #D080/00. There is no denial of the Director's assertion that Hazeldine was provided opportunities to provide information on the amount of the director/officer Determination before it was issued.

ARGUMENT AND ANALYSIS

While Hazeldine is critical of the Director not involving him in the calculation of the amounts owing in the corporate Determination, I can find no basis for concluding there was a breach of natural justice by the Director. The Director was not required to involve Hazeldine in that investigation of the corporate Determination. I accept that Hazeldine was provided opportunity to respond to the conclusions made by the Director in the corporate Determination prior to the issuance of the director/officer Determination and, more to the point perhaps, Hazeldine has had well over a year to demonstrate errors in the director/officer Determination in respect of the two employees whose claims remain outstanding are which are being addressed in this appeal. Hazeldine also contends that the Director did not correctly calculate the director/officer Determination, but once more, there is nothing in the material or in the appeal that demonstrates any error in the calculations done by the Director relating to the two individuals who are the subject of this decision. The appeal says that if Hazeldine had been involved in the calculation of the amounts owed under the *Act*, the result would have been much different. Factually, there is nothing in the materials or in the appeal to support that assertion. Hazeldine says the amounts found owing to Robert S. Hazeldine and Jim Burns in the corporate Determination are in error and those errors have been carried over into the director/officer Determination, but the appeal, beyond general statements, does not show why the Tribunal should reach make that finding.

Counsel for Hazeldine suggests that the employees should be required to prove their claims to the Tribunal and that absent compelling evidence supporting the conclusion of the Director, Hazeldine's figures should be preferred. It is not the function of the Tribunal to re-investigate the claims made by employees. Rather, it is for Hazeldine to show there is an error in the Determination, see *Re World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96). Nor will the Tribunal exercise its authority under Section 115 of the *Act* to refer back to the Director in the absence of some good reason for doing so. No good reason has been provided. There is nothing in the appeal which shows that the result of Hazeldine's calculations are more 'compelling' than the calculations made by the

Director following a detailed review of the records provided by the Trustee in Bankruptcy. Hazeldine may disagree with those calculations, but he has provided no objective basis for that view, which is somewhat surprising in light of the amount of time that the conclusions made by the Director have been under scrutiny.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated January 19, 2001 be confirmed in the amount of \$242,641.63, less those claims which have been settled, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal