

An appeal

- by -

Hugh Cross, a Director or Officer of Roman Express Inc.  
(“Cross”)

- 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.:** 2002/107

**DATE OF DECISION:** May 7, 2002

## DECISION

### OVERVIEW

This is an appeal by Hugh Cross ("Cross") under Section 112 of the *Employment Standards Act* (the "Act") of a Determination, which was issued against him as a director or officer of Roman Express Inc. ("Roman") by a delegate of the Director of Employment Standards on February 5, 2002. The Determination requires Cross to pay \$20,179.15 as a result of a finding that he is personally liable for wages owing to five former employees (the "Respondents") of Roman. That liability arises from Section 96 of the *Act*.

### ISSUE TO BE DECIDED

Did the Delegate err in determining that Cross is liable under Section 96 to pay wages in the amount of \$20,179.15 to the Respondents?

### FACTS AND ARGUMENTS

On September 20, 2001, the Delegate issued a Determination against Roman, which found that it owed the Respondents a total of \$19,824.61 in wages.

There has been no appeal of the Determination issued against Roman.

On February 5, 2002, the Delegate issued the Determination, which is the subject of this appeal. In it, Cross is found liable as a director or officer of Roman for \$20,179.15 which represents the same amount of wages as set out in the corporate Determination plus some additional interest.

Cross filed an appeal on February 27, 2002. He says he ceased being a director of Roman on January 13, 2000. He enclosed various documents, which confirm he resigned as a director and officer on January 13, 2000. Cross says that following his resignation he was laid off by the company in March of 2000. Subsequently, the company went into receivership and the Receiver operated the company until August of 2001. He said he felt the Receiver had ample time and opportunity to deal with the issues (presumably by this he means the wage claims made by the Respondents) and he was led to believe it was doing so. Cross admits he was a director of Roman during some of the time that the Respondents employees are claiming wages for, but the Receiver having been negligent by not dealing with these issues, should be solely responsible for any compensation to the Respondents.

The Delegate and the Respondents were invited to reply to the appeal. Only the delegate replied. In her submission dated March 28, 2002 the Delegate says she is satisfied that Cross resigned as an officer and director of Roman on January 13, 2000. She then proceeds to refer, for the most part, to Cross's resignation date as January 13, 2001. However, after a complete reading of her submission and a review of all of the material before me, I am satisfied that she meant to write the year as 2000 and I have substituted that year for the year 2001 in her submission. The Delegate says that given Cross resigned on January 13, 2000, only one of the Respondents is owed wages by Cross. Ian Findlay ("Findlay") earned wages prior to January 13, 2000. Part of his claim is for vacation pay for the year 2000. Given that Cross was a director of Roman for part of the year 2000 he is liable for vacation pay earned in that part of the

year. She estimates that Cross is liable for \$68.09 in vacation pay, plus interest of \$5.51 calculated to the date of the Determination. The remaining four Respondents are not owed wages by Cross because they either did not start their employment prior to January 13, 2000 or their claim involved wages which were earned after January 13, 2000.

The parties were given an opportunity to reply to the Delegate' submission. The Tribunal received no replies.

## **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.

I accept that Cross resigned as a director and officer of Roman on January 13, 2000. He is, therefore, only liable for wages that were earned or should have been paid to the Respondents prior to January 13, 2000. That liability is not eradicated by the action or lack of action on the part of the Receiver.

The Delegate says that given Cross resigned on January 13, 2000, he is only liable for certain vacation pay owed to Findlay. None of the parties challenged this position and having reviewed the information before me I cannot say that the Delegate is wrong. I therefore accept her position, as well as her calculation of the amount owed to Findlay, and I will vary the Determination to reflect these changes.

## **ORDER**

I order, under Section 115 of the *Act*, that the Determination dated February 5, 2002 be varied to show that Cross owes Findlay \$73.60 plus any further interest accrued pursuant to Section 88 of the *Act*. As for the other four Respondents, the Determination is cancelled.

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**Norma Edelman, Vice-Chair**  
**Employment Standards Tribunal**