

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 -

Najma Arshid
("Arshid")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE No.: 99/140

DATE OF DECISION: May 11, 1999

DECISION

OVERVIEW

This is an appeal by Najma Arshid (“Arshid”) under Section 112 of *Employment Standards Act* (the “Act”), against a Determination which was issued against her as a director/officer of Barney’s Fast Food Ltd. (“Barney’s”) by a delegate of the Director of Employment Standards (the “Director”) on February 25, 1999. The Determination requires Arshid to pay \$2,427.60 as a result of a finding that she is personally liable for wages owing to Manjit Sahota (“Sahota”). That liability arises from Section 96 of the *Act*.

This appeal proceeded by way of written submissions which were received from Arshid’s husband and Sahota.

ISSUE TO BE DECIDED

Did the Director err in determining that Arshid is liable, under Section 96 of the *Act*, to pay wages to Sahota in the amount \$2,427.60.

FACTS

Sahota was employed by Barney’s as a kitchen helper. She filed a complaint at the Employment Standards Branch that no wages were paid to her during her employment.

Upon completing an investigation, the Director determined that Barney’s owed Sahota \$2,394.31 in unpaid wages plus interest, and issued a Determination to that effect on November 18, 1998.

Barney’s appealed the Determination. On March 24, 1999, following an oral hearing, the Tribunal issued a decision (BC EST #D122/99) which confirmed the Determination.

On February 25, 1999 the Director issued a the Determination which is the subject of this appeal. In it, Arshid is found liable to pay the wages owing to Sahota, plus additional accrued interest, by virtue of Section 96 of the *Act* (Corporate officer’s liability for unpaid wages), as follows:

Section 96 of the *Employment Standards Act* states that a person who was a director or officer of a company while wages were earned or should have been paid is personally liable for those unpaid wages in amounts of up to 2 months’ wages for each employee.

Based on the evidence from the Registrar of Companies, you were a Director or Officer of Barney's Fast Food Ltd. at the time these wages were earned or should have been paid. Therefore, as a Director or Officer, you are personally liable for up to 2 months' unpaid wages for each employee.

CONCLUSION

I have determined that you are personally liable for wages owing to Manjit K. Sahota. The amount payable is \$2,394.31 plus interest accrued for the period December 12, 1998 to February 25, 1999 in the amount of \$33.29, for a total of \$2,427.60.

On March 10, 1999, Arshid's husband, Mohammad Arshid, filed an appeal of the February 25, 1999 Determination. In the appeal, Mohammad Arshid does not dispute that Arshid is an director/officer of Barney's, nor does he dispute that the Director has erred with respect to the calculation of her personal liability. He does, however, question why this Determination was issued when the Tribunal had yet to decide the appeal of the previous Determination and further, that following the hearing in February his wife gave him wages to give to Sahota and they "...will not give her a penny more because that money is not hers and she did not earn it."

The other parties were invited to reply to the appeal. The Director made no submission and Sahota replied on March 27, 1999 stating: "I have been waiting approximately 8-9 months for my wages to be paid out to me. It is unfair and sad to say that companies (sic) can get away without paying their employees." Although invited to do so, the Arshids made no further submissions on the appeals.

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 2 months' unpaid wages for each employee.

The Tribunal has consistently held that an appeal by an officer or director must be limited to the issues which arise under Section 96 of the *Act* - whether she/he is or was a director or officer of a certain corporation and/or whether the calculation of her/his personal liability is correct. An director or officer is estopped from arguing the merits of the corporate determination, except where there has been fraud in the issuance of the corporate determination or where she/he has cogent new evidence not previously available:

(Steinemann, BC EST D180/96, Perfecto Mondo Bistro BC EST D205/96, and Seacorp Properties Inc. BC EST D440/97).

Neither Arshid or her husband claim that Arshid was not a director or officer of Barney's at the time wages were earned or should have been paid to Sahota and they do not claim that the calculation of Arshid's personal liability is in error. Further, they did not provide any allegation or evidence of fraud in the issuance of the corporate Determination dated November 18, 1998, nor do they claim that they have new evidence not previously available at the time of the issuance of the corporate Determination. Mohammad Arshid's appeal deals with the timing of the issuance of the February 25, 1999 Determination. However, the timing of the issuance of the February 25, 1999 Determination is a completely insufficient and irrelevant ground to set aside that Determination. The Director can issue a determination against a corporation or director/officer at any time following an investigation, and as indicated above, the appeal by Arshid must be limited to whether she was an director/officer and/or whether the calculations exceed the two month threshold. Further, although it is not clear if Mohammad Arshid is claiming that wages have been paid to Sahota, it is clear that Sahota, in her response, states that she is still waiting for her wages.

For these reasons, I find that this appeal must fail.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Norma Edelman
Acting Chair
Employment Standards Tribunal

NE/bls