

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-

Alois Pfenniger

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 99/207

DATE OF DECISION: May 19th, 1999

DECISION

OVERVIEW

On April 12th, 1999 Valerie Ann Pfenniger filed an appeal, pursuant to section 112 of the *Employment Standards Act* (the “Act”), with respect to a determination issued by a delegate of the Director of Employment Standards on March 15th, 1999 under file number ER#071-443. Although the appeal was filed in her own name, I understand that Ms. Pfenniger’s intent was to file the appeal on behalf of Alois Pfenniger, the only party named in the determination under appeal.

Alois and Valerie Pfenniger were separately named in two otherwise identical determinations that were both issued on March 15th, 1999 under the same file number. In each case, Alois and Valerie Pfenniger were determined to be liable as directors or officers for unpaid wages owed to three former employees of a company known as Valco Discount Club Inc. (“Valco”).

TIMELINESS OF THE APPEAL

The only relevant issue raised by Ms. Pfenniger in the appeal filed on Mr. Pfenniger’s behalf is that Mr. Pfenniger was never a *director* of Valco and “had no business position whereby he did any business dealings in this company at any time”. Ms. Pfenniger does not specifically assert that Alois Pfenniger never held an *office* with Valco.

The appeal documents filed in this matter are identical to those filed in Ms. Pfenniger’s own appeal; indeed, Ms. Pfenniger simply copied the documents in her appeal and appended them to the determination naming Mr. Pfenniger--I have no documents before me actually showing Mr. Alois Pfenniger as an appellant, although, as noted above, I am proceeding on the basis that Ms. Pfenniger intended to appeal the Alois Pfenniger determination on Mr. Pfenniger’s behalf.

I have disposed of the matters raised by Ms. Pfenniger’s appeal in B.C.E.S.T. Decision No. 191/99, a decision that is being issued concurrently with these Reasons for Decision.

The relevant facts are set out in the Valerie Pfenniger decision and need not be repeated here. As was the case with that latter appeal, this appeal was similarly filed after the governing time limitation for appealing the determination had expired. The first point that I need address, therefore, is whether or not to grant an extension of the appeal period.

Clearly, this is an appeal with little, if any merit, insofar as the question of Mr. Pfenniger's status is concerned. I have no information whatsoever before me from Mr. Pfenniger, only Ms. Pfenniger's assertion that Mr. Pfenniger was never an officer or director of Valco. However, this latter assertion stands in marked contrast with annual reports filed by Valco with the B.C. Registrar of Companies which list Alois Pfenniger, as of February 7th, 1998, as holding the office of "chief executive officer". Alois Pfenniger was named as one of three Valco principals--the others being Ms. Pfenniger and one David Coulombe. I am satisfied that such an office falls within the definition of "senior officer" set out in section 1 of the *Company Act*.

These same reports do not indicate that Alois Pfenniger was a Valco director, however, a person may be held personally liable for up to 2 months' unpaid wages under section 96 of the *Act* provided that person was *either* an officer or director of the employer during the time when the employees' wages were earned or should have been paid.

Notwithstanding this appeal's dubious merit, however, for the reasons given in the Valerie Pfenniger appeal, I am granting a limited time extension solely for the purpose of correcting a clerical error with respect to the calculation of Alois Pfenniger's unpaid wage liability.

ORDERS

Pursuant to section 109(1)(b) of the *Act*, the time for appealing the March 15th, 1999 Determination issued against Alois Pfenniger is extended to April 12th, 1999.

Pursuant to section 115 of the *Act*, I order that the March 15th, 1999 Determination issued against Alois Pfenniger be varied to show a total liability of **\$18,118.45** plus interest to be calculated in accordance with section 88 of the *Act*.

As amended, the “Calculation Sheet” appended to the March 15th Determination should now provide as follows:

- Director’s liability for 2 months’ wages due to Karen L. Culley = \$1,278.25;
- Director’s liability for 2 months’ wages due to Kelly D. Deschambault = \$6,898.49;
- Director’s liability for 2 months’ wages due to Sherry Ann Savage = \$9,941.71

In all other respects, the March 15th, 1999 Determination is confirmed.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal