

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 -

Kathryn Meeks, a Director or Officer of Amber Computer Systems Inc

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 1999/787

DATE OF DECISION: May 30, 2000

DECISION

SUBMISSIONS

Ms. Kathryn Meeks	on behalf of herself
Mr. Gordon Kao	on behalf of himself
Ms. Martha Rans	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by the Ms. Meeks pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued on December 7, 1999 which determined that she was liable as a corporate director or officer for two months wages to two former employees of Amber Computer Systems Inc. (the “Employer”), Mr. Gordon Kao and Mr. Ted Sorenson, for a total of \$13,844.22 (for 1997). A corporate determination was issued on June 2, 1997 against the Employer and this determination was appealed. The appeal was not successful.

The Director’s delegate found that Ms. Meeks was a director or officer of the Employer at the material time. The Determination does not contain any express analysis of what constitutes “2 months’ unpaid wages for each employee” for the purposes of Section 96 of the *Act*; rather, it simply states that Mr. Kao is owed \$8,135.67, including interest, and Mr. Sorenson is owed \$5,708.55, also including interest. The Determination refers to the determination against the Employer for detailed calculations.

Ms. Meeks argues the Determination is wrong. In her original appeal, the grounds of appeal are stated as follows:

1. the corporate determination is still under appeal;
2. the Employer has filed an application for judicial review of the determination against it;
3. the corporate determination is incorrect in a number of respect, including the wage rate used by the delegate to determine Kao’s and Sorenson’s rate of pay;
4. the delegate ignored evidence that Kao’s and Sorenson’s complaint was vexatious and filed in “bad faith”.

The appeal is opposed by the Director. The Director’s position, simply put, is that the appeal does not have any merit as it does not address Section 96 issues. Kao also makes a submission opposing the appeal.

ANALYSIS

Section 96 of the *Act* provides for personal liability for corporate directors and officers. They may be liable for up to two months' unpaid wages for each employee, if they were directors or officers at the time the wages were earned or should have been paid. Section 96 provides, in part:

96.(1) 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.

Ms. Meeks does not address any of the issues under Section 96, such as whether she was a director/officer at the material time, or whether the amount of personal liability was calculated correctly (see, for example, *Beurlinga*, BCEST #053/98). She does not deny that she was a director of the Employer at the material time. She does not take issue with the calculation of the director/officer liability. The first two grounds of appeal are not relevant for the present purposes. Her other grounds are related to her disagreement with the determination against the Employer.

I am concerned that the Determination does not expressly deal with the issue of "2 months' unpaid wages." As stated in a recent case, *Raymon man Wah Lee, Director/Officer of C-O-E Posscan Systems Inc., et al.*, BCEST #D158/00:

"Given the remedial purpose of the *Act*, I do not accept that the legislature intended to define the "ceiling" on director/officer liability with reference to the actual earnings or wages in the last two months. In my view, the legislature have intended to define "2 months unpaid wages" with reference to "normal" wages (see, for example *Kenpo Greenhouses Ltd. v. British Columbia (Director of Employment Standards*, <1997> B.C.J. No. 541 (B.C.S.C.). ... In other words, the ceiling must be established with reference to "normal" wages.

In my opinion, "normal" wages means the wages that are earned by an employee over a period of time and are reasonably reflective of the employee's typical, regular or usual wages."

Ms. Meeks does not raise this issue. She does mention, though, that the two employees in question earned "in excess of \$70,000.00" and that, in 1997, Mr. Kao "was paid a total of \$78,708.06 and Mr. Sorenson was paid \$75,746.10." In the circumstances, the amounts awarded, therefore, may well fall within what could reasonably be considered "2 months' unpaid wages."

I understand from the correspondence that Ms. Meeks is very concerned about her financial status and questions how "it is meritorious to impoverish a family in order to remunerate such highly paid individuals." I am sympathetic to her personal situation. However, I have to apply the *Act*.

In short, Ms. Meeks does not provide any reason why the Determination should be set aside and, in the result, this appeal must fail.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination in this matter, dated December 7, 1999 be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal