

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 -

Angela M Wynton
("Wynton")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 1999/21

DATE OF DECISION: May 31, 1999

DECISION

OVERVIEW

This is an appeal by Angela M Wynton (“Wynton”) pursuant to Section 112 of the *Employment Standards Act* (the *Act*) against a Determination issued on December 22, 1998 by a delegate of the Director of Employment Standards (the “Director”). The Determination under appeal in this proceeding held Wynton, as a director or officer of Westcoast Youth Net Society (“Westcoast”), personally liable for the full amount of the unpaid wages owed to two complainants under Section 96 of the *Act*. In another determination issued on the same date, the delegate found that Westcoast had contravened Sections 17(1), 18(1)(2), 34(2), 40(1), 46(1)(2) and 58(3) of the *Act*. The determination, also the subject of an appeal, ordered Westcoast to pay \$5,883.72 in unpaid wages to two former employees, Mark Mingail (“Mingail”) and Talisa Gula (“Gula”).

Wynton appealed the Determination on the grounds that it contained certain factual errors and the Director’s delegate did not present an opportunity for a plan to recover wages owed.

ISSUES TO BE DECIDED

Is Wynton entitled to a delay to pay wages owed to the complainants?

FACTS

The basic facts underlying the Determination are not in dispute and are summarized in another decision arising from the same complaints, BC EST #D205/99. Stated briefly, the complaints, Mingail and Gula, worked for Westcoast from August 24, 1998 to October 5, 1998 and September 7, 1998 to October 30, 1998, respectively. Each had an agreement with Westcoast to receive \$20.00 per hour. Wynton was the Director and manager of Westcoast. She hired both complainants. Neither Mingail nor Gula was paid according to his or her contract or according to the terms of the *Act*. Mingail did not receive any compensation during his period of employment. Gula received partial compensation in the amount of \$1,100 in cash from Winton.

The Director’s delegate found that Mingail and Gula had not been paid at least twice a month and that no payroll records had been provided or kept by Wynton on behalf of Westcoast. Based on work records, the delegate found that Mingail and Gula were owed regular wages, overtime and vacation pay for the periods of their employment. Both complainants signed agreements with Wynton in December 1998 that purported to override the standards of the *Act* regarding overtime pay.

In her appeal Wynton, specifically acknowledged that either she or Westcoast, owed wages to Mingail and Gula. She did take issue with some statements of fact in the Determination. She and the Director's delegate exchanged correspondence to establish the identities of former directors of Westcoast. Wynton was the sole director of Westcoast named in the Determination and did not contest that finding.

The major thrust of the appeal was that the Tribunal should order a grace period for the payment of wages owed to the two complainants. The Director's delegate had not offered a "payment proposal" to resolve the dispute. Wynton stated that she was taking various steps to obtain funds for Westcoast and would pay Mingail and Gula when resources permitted.

The Director's delegate stated that Westcoast had not offered any schedule for payment and had not paid any money owing as of April 30, 1999. Moreover, she had been given several opportunities to discuss payment, but had not offered any proposal to pay the complainants.

ANALYSIS

The disagreements about factual statements in the Determination did not affect the outcome of the appeal. Westcoast did not challenge the accuracy of the work records on which the Director's delegate relied. The circumstances under which Mingail and Gula worked are set out in a companion decision of the Tribunal, *Re Westcoast Youth Net Society*, BC EST #D218/99.

The decision in this case is governed by Section 96(1) of the *Act*, which states:

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.

Wynton was a director of Westcoast during the period that Mingail and Gula worked for the organization, a fact that she did not contest in her appeal.

I do not find any provision in the *Act* giving the Tribunal the authority to vary a Determination to establish a schedule of payments or to delay collection of wages owed. The appeal did not propose a schedule for payments. It merely requested a delay in the enforcement of the Determination. Arrangements for payment are administrative and fall under the Director's authority. Moreover, as the Director's delegate pointed out, the payment of wages owing has been pending for over 6 months. The thrust of this Decision is to hold Wynton personally liable for that amount in question should Westcoast lack the resources to meet its obligations to Mingail and Gula.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, I order that the Determination dated December 22, 1998 in respect of Wynton be confirmed. As a director/officer of Westcoast, she is liable under Section 96 of the *Act* for payment of \$5,883.72 to Mingail and Gula, plus interest accrued since the date of the Determination pursuant to Section 88 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal