

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 -

Avard Lorne Wallace

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE NO: 98/178

DATE OF HEARING: May 26, 1998

DATE OF DECISION: June 9, 1998

DECISION

APPEARANCES:

Thomas Theriault	On his own behalf
Gerry Omstead	On behalf of the Director
Claire Rochefort	Employment Standards Officer - Observer

OVERVIEW

This is an appeal by Avard Lorne Wallace ("Wallace"), a Director of Wallace Automation & Communication Systems Ltd (the "Company"), pursuant to Section 112 of the Employment Standards Act (the "Act") from a Determination (File No. 084740) dated March 03, 1998 by the Director of Employment Standards (the "Director").

Wallace is a Director of the Company which the Director's Delegate found employed Thomas Theriault ("Theriault") on a salary plus commission basis. The Director issued two Determinations. The first was against the Company and was dated January 12, 1998 and the second was against Wallace personally, in his capacity as Director of the Company, and was dated March 03, 1998.

The Appeal filed by Wallace, dated March 23, 1998, makes no reference to the Company but the essence of the Appeal is that Theriault was never employed by Wallace or the Company. Wallace did not cause the Company to appeal within the time limits set out by the Act.

ISSUE TO BE DECIDED

The issues to be decided in this case is whether the Director erred in finding that Wallace is liable for wages owed to Theriault.

FACTS

The Appellant, Wallace, did not appear for the hearing at the time and place designated and therefore there was no evidence or submissions presented which would refute the findings of the Director's Delegate.

ANALYSIS

The Director found that Theriault was employed by the Company and that the Company owed wages to Theriault. A Determination was issued against the Company. The Determination against the Company was not appealed.

The Director then issued a Determination against Wallace personally as a Director liable for the wages owed by the Company. Wallace then appealed on the basis that Theriault was not employed by the Company.

In my opinion Wallace can not appeal on this basis as the Determination against the Company was not appealed within the time limits of the Act.

Wallace failed to appear at the hearing to make any other submissions and his appeal would be dismissed for this reason in any case.

ORDER

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

JOHN M. ORR

Adjudicator

Employment Standards Tribunal