

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 -

Brad Wilson
(" Wilson ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/345

DATE OF DECISION: July 5, 2000

DECISION

OVERVIEW

This is an appeal filed by, and in the name of, Brad Wilson (“Wilson”), pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on April 20th, 2000 under file number ER 074-107 (the “Determination”).

The Director’s delegate determined that Timeac International Inc. (“Timeac”) owed its former employee, Ian Marsh (“Marsh”), the sum of \$3,513.77 on account of unpaid overtime pay and concomitant vacation pay and interest.

REASONS FOR APPEAL

As noted above, this appeal was filed by Brad Wilson, purportedly on behalf of Timeac. In a letter dated May 14th, 2000, appended to Wilson’s notice of appeal, Wilson states:

“As a *former* director and officer of Timeac International, I am appealing the enclosed Determination. As Timeac International is in bankruptcy as are the other directors, I am left as the only party with *potential* liability. Due to this fact I feel it is *my* legal right to be provided an opportunity to defend this action.” (my *italics*)

Wilson then asserts that Marsh’s (who was a former service technician with the now-bankrupt computer hardware/software retailer) monthly salary included an allocation for some 30 hours of overtime (Marsh, for his part, denies any such arrangement). Thus, Wilson says, the delegate erred in awarding Marsh any overtime pay. Further, Wilson also says that the delegate failed, in her calculations, to account for certain paid time off (including the Christmas 1996 break and meal break times) given to Marsh during his employment. Finally, Wilson asserts that Marsh’s unpaid overtime claim is “grossly exaggerated”.

ANALYSIS

In my view, this appeal is wholly misconceived and is not properly before the Tribunal. Setting aside, for the moment, the fact that Timeac is now in bankruptcy, it is not clear to me that Wilson--a *former* Timeac director/officer (Wilson says that he resigned his office and directorship more than 19 months ago)--has any present legal authority to act as Timeac’s agent for purposes of filing an appeal of the Determination. There is nothing in the material before me that would indicate a majority of Timeac’s shareholders have authorized Wilson to appeal the Determination on behalf of Timeac or that Wilson has been appointed as Timeac’s agent by anyone now responsible for the management of Timeac’s business affairs.

It should also be noted that Wilson himself is not liable under the Determination. It may be that in due course a determination will be issued against Wilson in his personal capacity pursuant to section 96 of the *Act* (which provides for personal unpaid wage liability for corporate directors

and officers). If and when such a section 96 determination is issued, Wilson will, of course, be entitled to appeal that determination. However, as matters now stand there is only a corporate determination before me and Wilson does not apparently possess the legal authority to appeal that Determination either in his own right or as an agent of Timeac.

More fundamentally, since Timeac is in bankruptcy an appeal of the Determination can only be filed by Timeac's trustee, in this case, Todd McMahon Inc.--see *Fyfe and Canadian Neon Ltd.*, B.C.E.S.T. Decision No. D080/00. The Determination was served on Timeac's licenced trustee (by registered mail) and the trustee has not taken any steps to appeal the Determination.

Finally, even the appeal of the Determination was allowed to proceed on its merits, it should be noted that, for the most part, Timeac's officials appeared to follow an "avoidance" strategy during the delegate's investigation of Marsh's unpaid overtime complaint. In light of the Tribunal's decisions in cases such as *Kaiser Stables Ltd.* (B.C.E.S.T. Decision No. D058/97), there does not appear to be any properly admissible evidence before the Tribunal to support Wilson's position that the Determination should be cancelled.

ORDER

Pursuant to subsections 114(1)(b) and (c) of the *Act*, I order that this appeal be dismissed.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal