

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 -

Raymond Man Wah Lee, Director/Officer of C-O-E Posscan Systems Inc.

-and-

Blaine Howard Rowlett, Director/Officer of C-O-E Posscan Systems Inc.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/320

DATE OF DECISION: July 18, 2000

DECISION

APPEARANCES

Mr. Raymond Man Wah Lee	on behalf of himself
Mr. Blaine Howard Rowlett	on behalf of himself
Mr. Douglas Stevens	on behalf of himself
Mr. W.H. Dennis	on behalf of the Director of Employment Standards

ANALYSIS

In my decision in BC EST #D158/00, I concluded that liability under Section 96 would be determined with reference to the following principle:

“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.”

I referred the calculation of the actual liability in that case back to the Director:

“While I am reluctant to set aside the Determination, keeping in mind that the appellants have the burden to show that the Determination is wrong, I agree that the delegate erred when he determined the “2 months unpaid wages” based on the last four months of employment for the purpose of liability under Section because “the last four months ... was the period during which the bulk of the outstanding commissions were earned” and that it was, therefore, “reasonable” to use that period. In the circumstances, the delegate may well have “overestimated” the director/officer liability and I refer the determination of liability with respect to the Law Determination back to the director based on the principles set out in this Decision.”

The delegate has provided the Tribunal with information from two perspectives. Mr. Law worked for the Employer for 21 months. For 10 months his commissions exceeded \$3,011.09 (April 1998), for 10 months his commissions were less. Looking at the commission earnings from the standpoint of “average” commissions, throughout Mr. Law’s employment, the average turns out to be \$2,975.24. In some cases, an average is appropriate, in other cases, perhaps, not. In some cases, it may be appropriate to consider a relatively short period, in other cases, a longer period. In my view, there is no “magic way” to calculate the liability, the point being that the delegate must consider 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.”

I understand from the delegate’s submission that Mr. Law, the Employee, does not have any submissions to make and that the director/officers, Mr. Lee and Mr. Rowlett, has not responded. I understand from Tribunal correspondence that the Director’s submission was sent to Mr. Lee and Mr. Rowlett. It appears that they have not responded to the delegate’s submission.

In the result, I agree with the change to the original amount of directors' liability. In this case the amount is slightly higher, namely \$19,225.56 (with interest).

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determinations in this matter, dated October 25, 1999 be varied such that the amount owed by the Mr. Lee and Mr. Rowlett is \$19,225.56.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal