

An appeal

- by -

Richard Baker, a Director or Officer of A.K.A. Rhino Prepress & Print Inc. and
a Director or Officer of Pacific Image Color Inc.

("Baker")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2002/188

DATE OF DECISION: June 25, 2002

DECISION

OVERVIEW

This is an appeal filed by Richard Baker (“Baker”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Mr. Baker appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “delegate”) on March 11th, 2002 (the “Determination”) pursuant to section 96(1) of the Act which provides as follows:

Corporate officer’s liability for unpaid wages

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.

By way of the Determination, the Director’s delegate ordered Baker to pay the sum of \$7,078.66 on account of unpaid wages (vacation pay) and section 88 interest owed to five former employees of a firm known as A.K.A. Rhino Prepress & Print Inc. (“Rhino”).

By way of a letter dated May 29th, 2002 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

BACKGROUND FACTS

As noted above, the Determination was issued pursuant to section 96(1) of the *Act*. On November 19th, 2001, some four months prior to the issuance of the Determination now under appeal, the Director issued a section 95 (the “associated corporations” provision of the Act) determination against Rhino and two other firms (namely, Sudden Fine Printing Ltd. and Pacific Image Color Inc.) ordering those firms to pay the sum of \$14,586.59 on account of unpaid wages and interest owed to former Rhino employees. This latter determination was not appealed and the governing appeal period has now expired.

It is my understanding that all three companies named in the November 19th section 95 corporate determination were formally declared to be bankrupt on or about April 25th, 2001.

Since the employees’ unpaid wage claims were not satisfied, and in light of the bankruptcy, the instant section 96 Determination was issued against, inter alia, Mr. Baker. The particulars of the unpaid wage claims now before me [after giving full effect to the 2-month wage liability ceiling set out in section 96(1) of the Act] are set out below:

Employee	Vacation Pay	Interest	Total Award
Stanley Chan	\$1,728.04	\$84.57	\$1,812.61
Seth McNamara	\$ 989.89	\$48.44	\$1,038.33
James Oldman	\$ 798.61	\$39.08	\$ 837.69
Scott Watson	\$2,019.80	\$98.85	\$2,118.65
Lorne Wedley	\$1,212.06	\$59.32	\$1,271.38
Totals	\$6,748.40	\$330.26	\$7,078.66

FINDINGS

The only document filed by Mr. Baker is his notice of appeal dated April 3rd, 2002, in which he states that he is currently in difficult personal and financial circumstances and that “the bank and Price Waterhouse controlled all finances for last six months and we could not pay holiday pay when company went bankrupt”.

Without in any way suggesting that Mr. Baker’s assertions are untrue, they nonetheless are not relevant to the issues that are properly before me. The evidence shows that when the employees’ unpaid wage claims crystallized, Baker was an officer (president) of Rhino, the employer firm. It would appear that the delegate incorrectly determined that Mr. Baker was a Rhino director--the corporate search relied on by the delegate indicates that Mr. Baker was not a director--however, that error is not consequential in this case since his personal liability does not depend on his being both a director and officer. The fact that Mr. Baker was the president of the employer firm (Rhino) when the employees’ wage claims crystallized is, standing alone, legally sufficient.

The unpaid wage claims of Rhino’s former employees have not been satisfied and, unfortunately for Mr. Baker, the Act imposes a personal liability on him for a portion of those unpaid wages. Further, the delegate’s calculations with respect to Mr. Baker’s liability appear to be entirely in order.

If Mr. Baker is of the view that the “bank” or the receiver/trustee acted inappropriately, his remedy is to commence separate legal proceedings against those entities. I pass no comment whatsoever as to the merits of any such actions. However, insofar as the Act is concerned, there is nothing before me which would call into question the correctness of the delegate’s finding that Mr. Baker is personally liable for the sum of \$7,078.66 in unpaid wages and interest.

It follows that this appeal must be dismissed.

ORDER

Pursuant to sections 114(1)(c) and 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of \$7,078.66 together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal