

An appeal

- by -

Dale Pauls
(“Pauls”)

- 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.: 2001/200

DATE OF DECISION: May 31, 2001

DECISION

OVERVIEW

This is an appeal filed by Dale E. Pauls (“Pauls”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Mr. Pauls appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on February 12th, 2001 under file number ER38-979 (the “Determination”) pursuant to which Tex Enemark (“Enemark”) was ordered to pay the total sum of \$9,946.72 on account of unpaid wages and interest owed to three former employees (including Pauls, who was awarded \$7,180) of Jesse Lake Placer Mines Ltd. (“Jesse Lake”).

The Determination was issued against Enemark 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 a letter dated May 7th, 2001 the parties were advised by the Tribunal that this appeal would be adjudicated based on the parties’ written submissions and that an oral hearing would not be held (see section 107 of the *Act*).

ISSUES ON APPEAL

In his appeal documents, Pauls asserts that the Determination is “wrong” in that his unpaid wage entitlement was incorrectly calculated. Pauls does not indicate in his appeal documents what, in his view, the delegate ought to have awarded him on account of his unpaid wages.

I should add that Pauls also says that the Director’s delegate incorrectly calculated the unpaid wage claim of another employee, however, since this appeal relates only to Pauls’ claim, I do not intend to address that other employee’s claim (and, in any event, the appeal documents are entirely deficient with respect to that other employee’s claim).

FACTS AND ANALYSIS

According to the information set out in the Determination (which is uncontradicted), on February 12th, 2001 a determination was issued against Jesse Lake for \$9,946.72 (*i.e.*, the identical sum set out in the Determination now under appeal before me) with respect to the same three former employees’ unpaid wage claims that are addressed in the section 96 Determination. So far as I

am aware, the February 12th “Jesse Lake” corporate determination was never appealed and the time for filing an appeal expired on March 7th, 2001.

If Pauls believes that his unpaid wage entitlement was incorrectly calculated, he ought to have appealed the Jesse Lake corporate determination. In some sense, the present appeal represents an attempt by Pauls to bypass the appeal limitation period set out in section 112 of the *Act* inasmuch as he cannot challenge his unpaid wage entitlement by way of an appeal of the Jesse Lake determination since such an appeal is now statute-barred. The present appeal--which raises the same issue that would have been raised had Pauls appealed the corporate determination--is, in my view, not properly before the Tribunal.

Quite apart from the foregoing, and as previously noted, although Pauls asserts that the amount awarded to him by way of the Determination is incorrect, he has not provided any calculations nor has he submitted any supporting documents to show what unpaid wage figure ought to have been awarded to him.

Enemark, for his part, has not filed any submission with the Tribunal. The Director’s delegate merely filed a two-sentence submission, dated April 4th, 2001, in which he stated that “the Determination stands on its own merits”.

All that I have before me is a schedule, prepared by Pauls, that purports to show actual cash advances paid by Enemark to Pauls but this document, standing alone, is of no assistance in determining Pauls’ actual unpaid wage entitlement. I should add that in a letter dated March 12th, 2001, Pauls was advised to provide to the Tribunal all relevant records and documents. In short, although it may be the case that Pauls’ unpaid wage entitlement was incorrectly calculated, given the dearth of material before me, I simply cannot say, on the balance of probabilities, that the delegate incorrectly determined Pauls’ unpaid wage entitlement.

In my view, this appeal must be dismissed because it is not properly before the Tribunal. Further, and in any event, Pauls’ appeal does not raise even a *prima facie* case that the Determination is incorrect.

ORDER

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

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal