

**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 -

Fred Arora  
("Arora")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 385/99

**DATE OF DECISION:** August 13, 1999.

**DECISION**

**OVERVIEW**

This is an appeal by Fred Arora, a Director or Officer of Fleet-Wood In-Design Inc. ("Arora") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination issued by a delegate of the Director of Employment Standards (the "Director") on May 31, 1999.

The Determination found Arora to be a Director or Officer of Fleet-Wood In-Design Inc. ("Fleet-Wood") and therefore liable for \$4,994.48 in unpaid wages pursuant to Section 96.

This appeal is decided based on the written submissions of the parties: the employee, Sukchain Sandhu (Sandhu), Arora, and the Director.

**ISSUES TO BE DECIDED**

The issue raised by this appeal is whether the appellant has met the burden of persuading the Tribunal that the Determination ought to be cancelled because the Director erred in fact or law.

**FACTS**

The Director issued a Determination against Fleet-Wood on April 13, 1999 in the amount of \$9,099.58. The Determination indicates that the Director sent a letter by certified mail to Fleet-Wood at its Richmond address setting out Sandhu's allegations. A Demand for Employer Records was attached. As the Director of the company, Arora was copied on the correspondence. Both packages were returned to the Director; the company mail was returned with a hand written notice "not here" and Arora's mail was returned unclaimed. The Determination further states that calls were made to Arora's home confirming his address as the same previously posted and to the company confirming the operating address as that on the returned mail. On March 29, the Director left a message with an employee of the company, but no call was returned. The Director made a finding of fact that the employer declined to participate in the investigation. In the absence of evidence to the contrary, the Director relied on the employee's records. The Director found that Sandhu worked for Fleet-Wood from October 1997 to May 1999 and was owed regular and overtime wages, statutory holiday and vacation pay as well as compensation for length of service.

The Director subsequently issued a Determination on May 31, 1999 against Arora as a Director or Officer of Fleet-Wood for up to 2 months' unpaid wages. Arora appeals this Determination on the basis that Sandhu's story is fabricated, that Sandhu is lying, that

Sandhu has been paid all wages owed either by cash, cheque or directly by contractors, and that Sandhu was employed by Umerjeet Dail, not Fleet-Wood. He also attaches copies of three cheques made out to Sandhu dated January 7, 1997 for \$432.00, January 14, 1998 for \$1000 and January 22, 1998 for \$1 000. Arora requests "this case be dismissed". Arora also comments that the reason he was late for the first appeal was because of chronic depression and sickness.

## **ANALYSIS**

Pursuant to Section 96(1) of the *Act*, 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.

The Tribunal has consistently held that the scope of an appeal of a determination made under Section 96 of the *Act* is limited to two issues: whether the individual is a director or officer of the relevant company, and whether the calculation of his/her personal liability is correct. Exceptions to that principle include the presence of fraud in issuing the Corporate Determination or the availability of new and cogent evidence that was not previously available to the director or officer (*Re Seacorp Properties Inc.* BC EST #D440/97, *Steinemann*, BC EST #D180/96).

Arora has not disputed that he was a director or officer of Fleet-Wood at the relevant times, nor has he taken issue with the calculations of his personal liability. Instead, he challenges the validity of the Corporate Determination dated April 13, 1999. Arora states that he was late in appealing the Corporate Determination because of chronic depression and sickness. In the absence of a decision granting an extension of time within which to file his appeal, the Corporate Determination is final (*Re Leon Hotel Ltd. (c.o.b. Quincy's Pub)*), BC EST #D201/99).

As to the exceptions stated above, the only exception relevant to this case is whether or not the evidence now provided by Arora was previously available to him. Arora presents copies of three cheques made out to Sandhu and argues that Sandhu has been paid all wages owing either by cash or cheque. He also argues that Sandhu has fabricated his story and that Umerjeet Dail, not Fleet-Wood was Sandhu's employer.

The Tribunal has held that it will not allow an employer to rely on evidence that was available and that could have been presented to the Director. It will not allow appellants to 'sit in the weeds', failing or refusing to cooperate with the Director and then later filing appeals of the Determination when they disagree with it (*Tri-West Tractor Ltd.* (1996) BCEST #D268/96).

In the present case, the Director copied Arora on correspondence relating to the complaint against Fleet-Wood. Certified mail that was sent to Arora's home address was returned 'unclaimed' despite the Director's confirmation of the address. It is clear that the Director did not have the benefit of the evidence Arora now presents. Arora provides no

explanation why this evidence was not provided to the Director. Even if I considered Arora's evidence, Arora has not made the payment period or work completed for each cheque apparent, nor has he provided any documentation to substantiate his claim that Umerjeet Dail was Sandhu's employer.

For these reasons, I find that this appeal must fail.

**ORDER**

Pursuant to section 115 of the Act, I order that Determination dated May 31, 1999 be confirmed in the amount of \$4,994.48 together with any interest that has accrued pursuant to section 88 of the Act.

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**Norma Edelman**  
**Acting Chair**  
**Employment Standards Tribunal**