

An appeal

- by -

Carl Shaw, a Director or Officer of Catt Steel Services Ltd.
(“Shaw”)

- 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.: 2002/231

DATE OF DECISION: August 7, 2002

DECISION

OVERVIEW

This is an appeal filed by Carl Shaw (“Shaw”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Mr. Shaw appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on April 3rd, 2002 (the “Determination”) pursuant to which he was ordered to pay the sum of \$6,973.93 on account of unpaid wages and interest owed to 17 employees of a company known as “Catt Steel Services Ltd (“Catt Steel”).

The Determination was issued against Shaw in accordance with the provisions of section 96(1) of the *Act*:

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.

Mr. Shaw also applied, under section 113 of the *Act*, for a suspension of the Determination pending the adjudication of his appeal but subsequently abandoned that request (see E.S.T. File No. 2002/232).

By way of letters dated June 12th and July 12th, 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). I have submissions before me from the Director as well as the appellant. None of the employees filed a submission with the Tribunal.

BACKGROUND FACTS

On November 30th, 2000, a Director’s delegate issued a determination against Catt Steel in favour of 17 employees of that firm in the total amount of \$7,041.96 (the “Corporate Determination”). According to the information set out in the Corporate Determination, the monies in question represented the difference between the employees’ benefit entitlement under the now-repealed *Skills Development and Fair Wage Act* and accompanying *Regulation* (\$4/hour) and the actual cost to the employer of providing the benefits in question (including provincial health insurance, disability insurance, eye and dental coverage).

Pursuant to subsections 3(2)(a) and (b) of the *Regulation*, that difference was required to be paid to the employees as part of their hourly wage. This latter subsection states that if the employer is paying, in this case, less than \$4 on account of benefits, “the difference between the value of the benefits provided [by the employer] and the amount required by [the] Schedule [*i.e.*, \$4] must be (a) paid as part of the hourly rate, and (b) clearly set out in the employee’s pay statement...as a benefit top-up”. The amounts in issue ranged, for each employee, from about \$20 to over \$1,600.

Catt Steel appealed the Determination to the Tribunal. In a decision issued on May 3rd, 2001 (B.C.E.S.T. Decision No. D205/01), Adjudicator Stevenson dismissed the appeal and confirmed the Determination.

The Director was only able to collect \$68.03 of the total amount due under the Corporate Determination and, accordingly, issued the Determination now under appeal before me.

The material on file clearly shows that, at all material times, Mr. Shaw was both an officer (president) and a director of Catt Steel.

FINDINGS

Mr. Shaw does not deny that he was a Catt Steel officer and director during the relevant time period. Mr. Shaw does not assert that any of the amounts payable to the various employees exceeds his 2-month “liability ceiling” under section 96(1).

Mr. Shaw does, however, raise a number of substantive issues (including a wholly unsubstantiated allegation of bias) with respect to the findings set out in the Corporate Determination. However, those issues are not now properly before the Tribunal in this appeal. The proper forum to challenge the findings set out in the Corporate Determination was in the appeal of that latter determination. If Catt Steel believes that the appeal decision is fundamentally incorrect, its remedy lies in an application for reconsideration (that must be filed by Catt Steel) under section 116 of the *Act*. I might add that if such an application was filed at this late date, it might well be summarily dismissed as untimely in the absence of a compelling explanation as to why the application was not filed sooner--see *Unisource Canada Inc.*, B.C.E.S.T. Decision No. D122/98 and *MacMillan Bloedel*, B.C.E.S.T. Decision No. D279/00.

As matters now stand, however, the original Corporate Determination has been finally confirmed and the correctness of that determination is governed by the principle of *res judicata* and thus cannot be reviewed yet again via these proceedings.

This appeal is dismissed.

ORDER

Pursuant to subsections 114(1)(c) 115(1)(a) of the *Act*, I order that this appeal be dismissed and that the Determination be confirmed as issued in the amount of **\$6,973.93** 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