

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 -

Minto Vig Director/Officer of
Ethnicom Communications Ltd.
("Vig")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 98/320

DATE OF DECISION: August 14, 1998

DECISION

OVERVIEW

This is an appeal by Minto Vig (“Vig”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination issued on May 1, 1998 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that Vig was a Director/Officer of Ethnicom Communications Ltd. (“Ethnicom”) and was liable for payment of wages owing to four complainants pursuant to Section 96 of the Act. The Determination in question referred to a corporate determination issued on May 1, 1998 which found that Ethnicom wages to four former employees, i.e., the complainants. Vig appealed on the grounds that the four complainants were independent contractors, not employees of Ethnicom. Counsel for the Director argued that the Tribunal had previously held that an appeal against a determination issued under Section 96 of the Act was limited to issues arising under Section 96. This decision is based on written submissions.

ISSUES TO BE DECIDED

The first issue to be decided is whether Vig, on an appeal of a Determination issued against him as a director of Ethnicom can properly appeal the issue of Ethnicom's liability for wages. If so, what was Ethnicom's liability for wages?

FACTS

There were relatively few facts in this case. Four persons, Claudia Dunn, Jessica Mackin, Viveka Melki and Katrina Warren, filed complaints against Ethnicom for unpaid wages. A delegate of the director issued a determination on May 1, 1998 finding that Ethnicom owed \$11,900.69 in unpaid wages to the complainants. Ethnicom did not appeal that determination.

Also on May 1, 1998, a delegate of the Director issued a determination against Vig under Section 96 of the Act for the amount of \$8,436.69, based on a finding of fact that Vig was a director/officer of Ethnicom.

On May 25, 1998, counsel for Vig informed the Tribunal that he acted on behalf of Vig with regard to the Determination in question. He stated that he did not represent Ethnicom in the matter.

The bases of the appeal that the four complainants were not employees of Ethnicom, but were instead independent contractors. The appeal referred to the method of payment to the four individuals. It alleged that they worked for other companies unrelated to Ethnicom and established their own starting and finishing times. According to counsel, the complainants used their own equipment to perform tasks assigned to them. Ethnicom did

not have exclusive control of the services the complainants performed. The complainants were reimbursed on a project basis, the time for which varied. Three of the complainants filed submissions with the Tribunal refuting each of the assertions in the appeal, also pointing out that Revenue Canada had found them to be employees for the period in question.

Counsel for the Director argued that previous decisions of the Tribunal had determined that directors and officers of companies subject to determinations under Section 96 of the Act are precluded from arguing the issue of the corporation's wage liability on appeal.

ANALYSIS

Vig's appeal did not challenge his status as a director or officer of Ethnicom. It was concerned solely with the status of the four complainants and an alleged error in the calculation of the wage entitlement of one complainant. Counsel for Vig stated explicitly that he did not act for Ethnicom in the appeal. Ethnicom did not appeal the corporate determination.

In Steinemann, Director/Officer of Pacific Western Vinyl Windows & Doors Ltd. BC EST D#180/96, the adjudicator analyzed the legal issues raised by an appeal of a Section 96 determination based on the underlying corporate determination. She concluded at pp. 8-9: The intent of Section 96 of the Act is to provide the Director of Employment Standards with a way of collecting wages that are owed by a company to its employees. It ensures that employees are protected against insolvent employers . . . through making directors and officers liable, within limits, for the payment of wages. This section of the Act was not meant to provide a company with a further opportunity to dispute the company's liability for wages.

This case fits squarely within the principles stated in Steineman.

A second determination was issued against an officer/director of Ethnicom, finding the individual owed an identical amount to the four complainants. That determination was also subject to appeal. The decision in that appeal is: Rana Vig, Director/Officer of Ethnicom Communications Ltd. BC EST #D352/98. The result of these two appeals is that Vig owes a maximum of \$8,436.99, plus such interest as accrued from the date of the determination. If the Director is successful in recovering a portion of the total of \$11,900.69 in wages owing under the corporate determination or from Rana Vig, Vig's liability will be reduced accordingly.

ORDER

For these reasons, under Section 115 of the *Act*, the Determination of May 1, 1998 is confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal