

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 -

Robert Doucette
(“Doucette”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Norma Edelman

FILE NO.: 467/99

DATE OF DECISION: August 31, 1999

DECISION

OVERVIEW

This is an appeal by Robert Doucette ("Doucette"), a Director or Officer of R.J. Hospitality Retail Systems Ltd. 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 July 13, 1999.

The Determination found Doucette to be a Director or Officer of R.J. Hospitality Retail Systems Ltd. ("R.J. Hospitality") and therefore liable for \$1,529.48 in unpaid wages pursuant to Section 96 of the *Act*.

ISSUE 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 R.J. Hospitality on July 5, 1999 in the amount of \$1,529.48 for violation of section 18 and section 58 of the *Act*. The Determination states that on June 19, 1999 the Director sent a letter to the two Directors/Officers of R.J. Hospitality, Robert Doucette and Robert Owen, and to the Registered/Records Office. This letter set out the allegations made by the complainant, Gregg Wilkinson (Wilkinson). Doucette did not respond to the letter and the Director was unable to reach him by telephone. Telephone calls to the business itself indicated that the business number was no longer in service and a visit to the business location indicated that the business had been shut down. As a result, the Director relied on the evidence as provided by Wilkinson in determining that R.J. Hospitality was liable for outstanding wages from the period June 1, 1999 to June 15, 1999.

The Director subsequently issued a Determination on July 13, 1999 against Doucette as a Director or Officer of R.J. Hospitality. Doucette appeals this Determination on the following grounds:

1. Wilkinson was an employee between September 1, 1997 and June 2, 1999 only. He then quit because he was fed-up and wanted to further his education and go on employment insurance
2. Wilkinson has been paid in full up until June 1, 1999.
3. Wilkinson had already taken ten working days off earlier in the week.

4. Wilkinson did not return either the car or office keys. Fifteen thousand dollars (\$15,000) worth of company property is still missing. This information has been provided to the RCMP and is being investigated. In addition, the company car has been reported stolen.

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, *Steinmann*, BC EST #D180/96).

Doucette has not disputed that he was a Director or Officer of R.J. Hospitality 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 July 5, 1999. No explanation is provided to explain why the Corporate Determination was not appealed. 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 Doucette was previously available to him. 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 sent a letter to Doucette outlining the allegations against the company. Doucette did not respond. Doucette does not provide any explanation for failing to provide the Director with the evidence he is now putting forward as it relates to Wilkinson's period of employment and vacation days. Even if I was to consider Doucette's evidence, it is incomplete as he has failed to provide any documentary evidence to substantiate his claims. Finally, the issue of the missing property valued at \$15,000 and the stolen vehicle are matters beyond the scope of the *Act* and are therefore left to the relevant authorities to address.

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

ORDER

Pursuant to section 115 of the *Act*, I order that Determination dated July 13, 1999 be confirmed in the amount of \$1,529.48 together with any interest that has accrued pursuant to section 88 of the *Act*.

Norma Edelman
Acting Chair
Employment Standards Tribunal