BC EST #D382/00

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 -

Habib Maung Win, Director of Burmastar Enterprises Ltd. operating as Burma Star Cleaning Services

- of a Determination issued by -

The Director of Employment Standards (the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/440

DATE OF DECISION: September 21, 2000

BC EST #D382/00

DECISION

APEARANCES/SUBMISSIONS

Mr. Habib Maung Win	on behalf of himself
Mr. Jim McPherson	on behalf of the Director of Employment Standards

FACTS AND ANALYSIS

This is an appeal by the Mr. Win pursuant to Section 112 of the *Employment Standards Act* (the "*Act*"), against a Determination of the Director of Employment Standards issued on February 17, 2000 which determined that Win was liable as a corporate director or officer for two months wages to a former employee of the Employer, Mr. Nairoz Khan, for a total of \$747.86. A corporate determination was issued and was to have been appealed by September 1999. The Determination was sent by registered mail to the registered office, the records office and Win's home address. There was no appeal filed.

The Director's delegate found that Win was a director or officer of the Employer. Win takes issue with the award in the corporate determination and says that it contained errors in the finding of the number of hours worked by Khan.

The delegate argues that it would be improper for the Tribunal to consider the merits of the corporate determinations at this stage, and that the only issues are (1) whether Win was a director or officer at the material time, and (2) whether the calculation of the personal liability was correct.

I agree with the delegate. I will not allow an appeal of the corporate determination at this stage. It appears that the determination was properly served (Section 122 of the *Act*). The appellant does not take issue with that. There is no explanation for the delay. Section 96 of the *Act* provides for personal liability for corporate directors and officers. They may be liable for up to two month's unpaid wages for each employee, if they were directors and officers at the time the wages were earned or should have been paid. The issues before me are those mentioned by the delegate. Win does not address those issues. He does not dispute being a director or officer at the material time. He does not take issue with the calculation of his personal liability. He simply says that the corporate determination was wrong. In the result, the appeal is dismissed.

I add, as well, that it appears to me that the appeal was not filed in a timely manner. The appeal was filed on March 22, 2000. According to the Determination, the appeal should have been filed no later than March 17. There is no explanation for the delay. Indeed, the delay is not even addressed. From the documentation submitted by the delegate, and his submissions, it appears that the Determination was served on Win on February 19, 2000. For that reason alone, I am of the view, that the appeal should be dismissed.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination dated February 17, 2000 be confirmed.

Ib Skov Petersen

Ib Skov Petersen Adjudicator Employment Standards Tribunal