

An appeal

- by -

Daljeet Singh Grewal, a Director or Officer of Economy Movers Inc.

- 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: Norma Edelman

FILE No.: 2002/375

DATE OF DECISION: September 3, 2002

DECISION

OVERVIEW

This is an appeal by Daljeet Singh Grewal ("Grewal") under Section 112 of the Employment Standards Act (the "Act") of a Determination, which was issued against him as a director or officer of Economy Movers Inc. ("Economy") by a delegate of the Director of Employment Standards on June 20, 2002. The Determination requires Grewal to pay \$1729.06 as a result of a finding that he is personally liable for wages owing to Marlon McMillan ("McMillan"). That liability arises from Section 96 of the Act.

ISSUE TO BE DECIDED

Did the delegate err in determining that Grewal is liable under Section 96 to pay wages in the amount of \$1729.06 to McMillan?

FACTS AND ARGUMENTS

On March 12, 2002 the delegate issued a Determination against Economy, which found that it owed McMillan \$3242.53. I shall refer to this Determination as the corporate Determination. A copy of the corporate Determination was sent to Grewal.

There has been no appeal of the corporate Determination.

On June 20, 2002, the delegate issued the Determination, which is the subject of this appeal. In it, the delegate found that McMillan earned and was owed wages for the period August 19, 1998 to August 19, 2000 and that Grewal was a director or officer of Economy at the time the wages were earned and became payable. She concluded that Grewal owed McMillan \$1729.06, which represents two months' unpaid wages as per Section 96 of the Act.

Grewal filed an appeal on July 10, 2002. His reasons for the appeal are as follows:

1. The time limit for filing a complaint against a Director is six (6) months as provided in s. 74 of the Employment Standards Act.
2. Daljeet Singh Grewal is neither an Officer or Director of Economy Movers Inc. and has not been since June 1st, 2001.

Grewal enclosed a copy of a document (Notice of Directors) dated September 18, 2001, which shows he ceased to be a director of Economy on June 1, 2001.

The delegate and McMillan were invited to reply to the appeal. McMillan did not reply.

The delegate replied that the appeal should be dismissed. She says that Section 74 of the Act does not mention time limits in regard to filing a complaint against a director probably because the Act does not contemplate a complaint being filed against a director. Initially the complaint is filed in the name of the employer. Further, the important requirement is that the complaint be filed within 6 months after the last

day of employment. She says the Appellant has not raised any issue in that regard and, in any event, this issue could only be raised under an appeal of the corporate Determination. The delegate also says Grewal was a director at the time McMillan's wages were earned or should have been paid. His resignation took place after the wages were earned.

Grewal was given an opportunity to reply to the delegate's submission. No reply was received by the Tribunal.

ANALYSIS

Section 96(1) of the Act creates a personal liability for corporate officers and directors, as follows:

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 two months' unpaid wages for each employee.

The Tribunal has consistently held that an appeal by an officer or director must be limited to the issues that arise under section 96 of the Act -- whether she/he is or was a director or officer of a certain corporation at the time wages of an employee were earned or should have been paid and/or whether the calculation of her/his personal liability is correct. A director or officer is estopped from arguing the merits of the corporate Determination, except when there has been fraud in the issuance of the corporate Determination or where she/he has cogent new evidence not previously available: (*Steinemann*, BCEST #D180/96, *Perfecto Mondo Bistro* BCEST #D205/96, and *Seacorp Properties Inc.* BCEST #D 440/97).

In this case, I cannot say that Grewal is arguing the merits of the corporate Determination.

Grewal first argues that the time limit for filing a complaint against a director is 6 months as per Section 74 of the Act. Presumably, he means McMillan's complaint is out of time and therefore the Determination should be cancelled for this reason. I do not agree with the delegate that this issue necessarily only goes to the merits of the corporate Determination and that it should have been raised on an appeal of the corporate Determination. In any event, I find no reason to overturn the Determination based on this limited argument.

Section 74 of the Act states that an employee or other person may complain to the Director of Employment Standards that a person has contravened the Act and a complaint relating to an employee whose employment has terminated must be delivered to the Employment Standards Branch within 6 months after the last day of employment and a complaint regarding Sections 8, 10, or 11 of the Act must be delivered within 6 months after the date of the contravention. Sections 8, 10, and 11 are not relevant to this case and therefore McMillan was required to file a complaint within 6 months of the termination of his employment. There is no requirement under Section 74 of the Act for a complainant to name a director or officer of a corporation in his/her complaint. Section 74 makes no reference to filing a complaint against a director. It refers to filing a complaint against a person, which as defined in the *Interpretation Act* includes a corporation. Grewal bears the burden in an appeal to show that the Determination should be varied or cancelled. He has not shown that McMillan failed to file his complaint against Economy within 6 months after his employment was terminated.

Grewal also argues that he ceased to be a director of Economy on June 1, 2001. The delegate submits that McMillan's unpaid wages were earned during the period August 19, 1998 to August 19, 2000. Grewal does

not dispute this fact, nor does he claim that he was not a director or officer of Economy during the period August 19, 1998 to August 19, 2000. Accordingly, I accept that Grewal was a director of Economy at the time McMillan's unpaid wages were earned and should have been paid. He is therefore liable for up to two months' unpaid wages. The delegate has calculated this amount to be \$1729.06. Grewal does not claim that this calculation is in error, and as a result I am satisfied that the delegate's calculations are correct.

For the above reasons Grewal's appeal must fail.

ORDER

I order, under Section 115 of the Act, that the Determination be confirmed.

Norma Edelman
Vice-Chair
Employment Standards Tribunal