

An appeal

- by -

John Thomas Baird, a Director or Officer of Universal Cleaning Equipment Inc.  
op. as Kirby Home Care Products  
("Baird")

- 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:** Lorne D. Collingwood

**FILE No.:** 2002/304

**DATE OF DECISION:** September 19, 2002

## DECISION

### OVERVIEW

The Director of Employment Standards (who I will henceforth refer to as “the Director”) issued a Determination against Universal Cleaning Equipment Inc. operating as Kirby Home Care Products (“Universal” and “the employer”) on November 2, 2001. In that determination (“the Corporate Determination”), Universal is found to have contravened the *Employment Standards Act* (the “*Act*”) and it is ordered to pay Lorna Bedford (now Lorna Dionne) \$3,788.78 in wages and interest.

The Corporate Determination was not appealed.

On May 14, 2002, a determination was issued by the Director against John Thomas Baird as a director and/or officer of Universal. That determination (the “Second Baird Determination”), orders Baird to pay Lorna Dionne two months’ wages, namely, \$2,788.78. Mr. Baird appeals the determination which is against him personally. This decision pertains to that particular appeal.

[There are other determinations against Universal and the directors/officers of that corporate body. A corporate determination dated October 15, 2001 orders Universal to pay Joshua McLafferty \$2,717.57 in wages and interest and Tracey Williamson \$1,220.45 in wages and interest. Determinations were subsequently issued against the company’s directors and officers, Mr. Baird included. The determination which is against Mr. Baird personally is for the entire amount of the corporate determination.]

In appealing the Second Baird Determination, Mr. Baird does not argue that he was not a director/officer of Universal when Dionne (Bedford) was employed by Universal, nor is he claiming that he is being ordered to pay more than the amount that he is, as a director/officer, liable for under the *Act*. The appeal is, in part, that he was not very active as a director and, as I understand it, that I should cancel or vary the Second Baird Determination for that reason. I have found that the degree to which a director is active as a director is of no importance, that it is enough that he was a director during the period that Dionne worked for Universal.

In appealing the Second Baird Determination, Mr. Baird also seeks to challenge the Corporate Determination. I have in this decision found that the matter of the Corporate Determination is now final and I may not, as such, revisit the matter of the Corporate Determination.

### ISSUES TO BE DECIDED

Baird is not arguing that he was not a director/officer of Universal when Dionne worked for Universal, nor is he claiming that he is being ordered to pay more than the amount for which he is, as a director/officer of the corporate body, liable under the *Act*.

Baird’s appeal is that he was not all that active as a director. He claims that he did not direct or control her work but did little more than ask “Lorna how she was doing” and “be nice to her”. Mr. Baird also seeks to reopen matters that are addressed by the Corporate Determination. He claims that the Determination is wrong on the number of hours worked.

What I must ultimately decide is whether it is or is not shown by the Appellant that the Determination ought to be varied or cancelled, or a matter(s) referred back to the Director, for reason of an error or errors in fact or law.

## FACTS AND ANALYSIS

The statutory period for an appeal of the Corporate Determination has come and gone without there being an appeal. As such, that decision is now final.

- 112** (1) Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.
- (2) The request must be delivered within
- (a) 15 days after the date of service, if the person was served by registered mail, and
  - (b) 8 days after the date of service, if the person was personally served or served under section 122 (3).

The Second Baird Determination is against John Thomas Baird as a director or officer of Universal. The decision is that Baird was a director/officer of Universal at the time wages were earned by Dionne (Bedford) and that, pursuant to section 96 of the *Act*, he must pay Dionne \$2,788.78 as that is equal to two months' wages.

Section 96(1) of the *Act* provides that a person who is 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.

- 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.
- (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
- (a) any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,
  - (b) vacation pay that becomes payable after the director or officer ceases to hold office, or
  - (c) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1).

Mr. Baird is not claiming on appeal that he was not a director or officer of Universal in the relevant period, nor is he claiming that he is being ordered to pay more than the amount for which he is, as a director/officer, liable under the *Act*. His claim is, in part, that he was not a particularly active director, and reading between the lines, that some sort of consideration should be given to that. He also seeks to reopen matters that are addressed by the Corporate Determination.

In regard to his first point, I find that the extent to which he was active as a director or officer of Universal is of no real importance. Section 96 applies to any person that was a director or officer of the corporation at the time wages were earned and should have been paid, even a passive director. It is enough that Mr. Baird was a director/officer of the incorporation at the time Dionne worked for Universal and the amount of her wages became due and payable.

What remains of the appeal is a request by Mr. Baird that he be allowed to challenge the validity of the Corporate Determination which is against Universal.

Persons have in the past sought to challenge corporate determinations by appealing determinations which are against them personally as directors/officers of the corporate bodies. The Tribunal has said that a director or officer of an incorporation may argue whether they are or are not a director or officer, and/or the amount of their personal liability under the *Act* but they may not, unless there is fraud or new and cogent evidence not previously available, use the appeal process to, in effect, reopen a determination which is against the corporate body and final.

There is no evidence of fraud in this case, nor is it that new and cogent evidence has just come to light, evidence that was not previously available. And the Corporate Decision is, in this case, final and it is, as such, not a decision that I am prepared to revisit.

The Second Baird Determination is confirmed.

## **ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated May 14, 2002 be confirmed. Mr. Baird is liable for \$2,788.78 of Lorna Bedford's wages.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**