



An appeal

- by -

Paul Sihata, a Director or Officer of North Shore Auto Towing Ltd.

- 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: John M. Orr

FILE No.: 2001/490

DATE OF DECISION: August 23, 2001

DECISION

OVERVIEW

This is an appeal by Paul Sihata (“Sihata”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) from a Determination dated June 6, 2001 by the Director of Employment Standards (the “Director”). The Determination is made against Sihata personally as if he were a director or officer of North Shore Auto Towing Ltd. (the “company”). Sihata submits that he was not a director or officer of the company during the time that the liability was incurred. However, he became a director after the time that the wages were earned.

FACTS AND ANALYSIS

The Director issued a Determination against the company on May 29, 1997 in relation to unpaid wages. The corporate Determination was not appealed and remains unpaid. On June 6, 2001 the Director issued a Determination against Sihata alleging that as a director or officer he was personally liable for up to two months unpaid wages for each employee. The amount personally owing under the director’s determination is \$2,233.00.

The wage claim is for wages earned in the period September 1, 1995 to February 28, 1996. Sihata became a director of the company on February 21, 1997.

Section 96 provides in part:

96. (1) a person who was a director or officer of 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.

Section 17. (1) provides that at least semi-monthly and within 8 days after the end of the pay period an employer must pay to an employee all wages earned by an employee in a pay period. Section 18.(1) provides that an employer must pay all wages owing within 48 hours after the employer terminates the employment. If the employee quits all wages must be paid within 6 days. Therefore all wages should have been paid, at the latest, within 6 days of February 28, 1996.

In the Determination the Director’s delegate found that Sihata was a director of the Company at the time the wages were earned but in his submission on this appeal he states:

“I have now reviewed the appeal letter from Mr. Sihata and obtained further records from the Corporate Registry. (copy attached). It appears that Mr. Sihata became a director after the time period in question, that being September 1, 1995 to February 25, 1996.”

The attached document provided by the Director's delegate from the Corporate Registry shows that Sihata became a director of the company as of February 21, 1997.

In light of the delegate's submission I am satisfied that Sihata did not become a director until after the wages were earned or should have been paid and therefore he is not subject to liability under section 96 and the determination should be cancelled.

ORDER

I order, under Section 115 of the *Act*, that the Determination is cancelled.

John M. Orr
Adjudicator
Employment Standards Tribunal