

An appeal

- by -

Rattan K. Lal, a Director or Officer of Ken Lal's Auto Body Ltd.
("Lal")

- 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: Paul E. Love

FILE No.: 2001/551

DATE OF DECISION: September 18, 2001

DECISION

OVERVIEW

This is an appeal by from a Determination dated July 13, 2001 issued by a Delegate of the Director of Employment Standards (“Delegate”). The employee earned wages with the employer, Ken Lal’s Auto Body Ltd., and was not paid his wages by the employer. The Delegate issued a Determination against the employer, and then issued a Determination against Rattan K. Lal, under s. 96(1) of the Act, on the basis that Mrs. Lal was an officer or director of the employer at the time that the wages were earned. There was no evidence that Mrs. Lal resigned from the company. Mrs. Lal appealed on the basis that she was legally separated from her husband, that she was not drawing any wages from the company, and was not involved in the day to day affairs of the company. The Delegate did not err in the Determination. The separation of Mrs. Lal from her husband, did not, at law, affect her resignation from position as director or officer with the company.

ISSUE:

Did the Delegate err in finding a separated spouse remained an officer and director of a company for the purposes of s. 96(1) of the *Act*?

FACTS

This case was decided on the basis of written submissions of the parties, without an oral hearing. Ronald Narain is an employee of Ken Lal’s Auto Body Ltd. (“Autobody” or “Employer”). The Delegate issued a Determination on May 20, 2001 against the Employer in the amount of \$5,942.64 including interest accrued to that date, in favour of Mr. Narain. Mr. Narain’s unpaid wages were earned between October 16, 2000 to January 3, 2001. The BC Online search, dated July 6, 2001, filed by the Delegate, shows that the Employer was incorporated on March 18, 1982. The BC Online search shows that Rattan K. Lal was a Director and Secretary of the Employer at all material times. There is no evidence that Mrs. Lal resigned from her the office of director or secretary with the Employer. The calculations filed by the Director establish that two months unpaid wages for Mr. Narain is \$3,813.33.

Submission of Mrs. Lal:

Mrs. Lal submits that she has been legally separated from her husband since May 1, 2000. She says that her husband is running the company and that she has not drawn a salary from the company and has not been participating in any of the daily operations of the company since March 31, 2000. She further suggests that she spoke to Mr. Narain on September 15, 2000 and suggested that he get a new job.

Submission of the Delegate:

The Delegate says that there is no evidence of a resignation by Mrs. Lal from her office, and therefore she is liable under s. 96 of the Act.

Employee's Submission:

The employee denies that he ever had a conversation with Mrs. Lal, as alleged by her. He seeks payment of his wages.

ANALYSIS

In an appeal under the *Act*, the burden rests with the appellant, to show that there was an error in the Determination such that I should vary or cancel the Determination. Section 96 (1) of the Act reads 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 2 month's unpaid wages for each employee.

The uncontradicted evidence, is that at the time Mr. Narain earned his wages, Mrs. Lal was a director and officer of the company. She had not tendered her resignation from the office. It is open for Mrs. Lal to address the consequences of this appeal, in her matrimonial proceedings with her husband. The "legal separation" of directors or officers of the company, or the non participation of a separated spouse in the affairs of a company, does not, at law, affect a resignation of a spouse from the company.

Mrs. Lal has not shown any error in the calculation of the employee's entitlement. It is unnecessary for me to address the conflict in the positions of Mrs. Lal and Mr. Narain concerning a conversation about Mr. Narain's position with the company. I find that the appellant has not demonstrated any error in the Determination.

ORDER

Pursuant to s. 115 of the *Act* I order that the Determination dated July 13, 2001 is confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal