

An appeal

- by -

Ken Savage

- 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.:** 2002/416

**DATE OF DECISION:** December 2, 2002

## DECISION

### OVERVIEW

This is an appeal by Ken Savage (“Savage”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated July 10, 2002 by the Director of Employment Standards (the “Director”). It also involves a cross appeal by the employer Alttech Ventures Corp. (“Alttech” or “the corporation”)

In the exercise of its authority under section 107 of the Act the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

The Director determined that Alttech had failed to pay wages to a number of employees, including Savage, at a time when the corporation was facing financial challenges. In the determination the Director’s delegate noted that “Alttech has not submitted any position nor any response to any correspondence or telephone inquiries relating to the allegations put forward by the complainants”. The Director found Alttech liable to pay \$47,153.80 in various forms of wages.

Alttech appealed from the determination. In the appeal the principal of the corporation pointed out that the name of the corporation was misstated in the determination, which was issued in the name “Alltech Ventures Corporation”, and that it should be “Alttech Ventures Corp.” The principal submitted that while there may have been difficulty in contacting her there were *bona fide* reasons for the failure of the corporation to adequately respond to the delegate during the investigation. Alttech also submitted substantial reasons why the determination should be varied.

Savage now also appeals the methodology used and the quantum of wages found to be owing to him.

### ISSUES

The real issue that arose in this case was whether this matter should be referred back to the Director in light of the new information provided by the appellant or whether the appellant was barred from raising those issues in light of her failure to adequately respond to the investigation. The issues raised by Savage are integral to that re-investigation.

### FACTS AND ANALYSIS

In light of the following facts and analysis that were found in the previous companion appeal by Alttech I have decided that this matter should be referred back to the Director as the issues involved are integral to that re-investigation.

The Director’s delegate confirmed that the proper name of the corporation should have read “Alttech Ventures Corp.” and not “Alltech Ventures Corporation”. In a submission dated September 19 2002 the Director’s delegate noted some of the attempts made to contact the corporation during the investigation.

He confirmed that on November 30, 2001 the principal of the corporation contacted the Employment Standards Branch (“the Branch”) and left a message. He said that the phone call was returned by a duty officer without success. He said that phone calls were made to Alttech offices and the home of the principal but no response was received by the delegate. On December 19 2001 a formal demand for records was issued to the registered and records office but this was returned unclaimed. The delegate said that he attended the premises of Alttech and confirmed that the operation had ceased. He said that he decided to issue the determination promptly in order to attempt recovery of wages owed in light of the fact that the business had ceased operations.

The principal of the corporation claimed that she did attempt on four separate occasions during September and October to contact the *Branch* and requested if it was possible to speed up the pace of the investigation. She said that she felt it was in the best interests of the employees and the company to have a determination in place as soon as possible. She alleged that she was told that it was simply not possible to investigate the complaints more quickly.

The principal of the corporation claimed that she did not receive any correspondence from the *Branch*. She said that her postal address has not changed since 1998 and her residential telephone number has been listed without change since the year 2000. She did note that she was involved in a serious motor vehicle accident in the fall of 2001. She suffered head injuries and file information indicates that she remains disabled. Apparently this accident was exacerbated by another accident in March 2002. The relevance of these accidents is that it might explain why the delegate seemed to have some difficulty contacting the corporation. However it appears that there was indeed some contact in that the principal was told that the investigation could not be expedited. The Director’s delegate did not refute this point in his submissions. It is not clear from the submission how many attempts were made to contact the principal of the corporation or in what manner.

However it appeared that the principal together with an assistant has been able to put together significant and substantial information that would be vital to a fair and reasonable assessment of the wages owing. Alttech does not seem to dispute that there may be some wages owing but there are significant issues in regard to the status of some employees, the nature of the termination of employment and calculation of wages that clearly require further investigation. Alttech provided more of than a *prima facie* defence to some of the claims adjudicator by the delegate.

In the companion decision I was satisfied on the material before me that the employer did not deliberately or wilfully fail to co-operate in the investigation. I was satisfied that the employer was not attempting to “lie in the weeds” or to deliberately obstruct the investigation. In my opinion it was consistent with the fundamental principles of the *Act* to return this matter to the Director for further investigation taking into account all of the material provided on behalf of the corporation.

In Mr. Savage’s case there appears to be a matter of fact that needs to be resolved. The employment contract contains a patent typographical error. It says that if the Company terminates the agreement the Company may elect to pay “two (4) weeks salary in lieu of notice.” The delegate also disputed Savage’s claim for a more extensive severance allowance. It appears to me that this matter is also integral to the re-investigation and therefore it should also be referred back to the Director for review.

**ORDER**

I order, under section 115 of the *Act*, that this matter is referred back to the Director for further investigation taking into account the new information provided by the corporation and by Mr. Savage.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**