

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

- by -

Habib Win, a Director or Officer of Burmastar Enterprises Ltd.  
operating as Burma Star Cleaning Services

("Win")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Paul E. Love

**FILE No.:** 2000/440

**DATE OF DECISION:** December 13, 2000

**DECISION**

**OVERVIEW**

This is an appeal by of a Determination, dated February 17, 2000 against a director of Burmestar Enterprises Ltd. The corporate director failed to file any appeal of the underlying determination where the Delegate found an entitlement to wages. In this appeal, the director of Burmestar argued that the Delegate erred because the Delegate did not take into account the actual hours worked by the employee. This is an argument that the company should have raised on an appeal of the determination. The director of Burmestar is estopped from raising this argument in a determination of personal liability of the director, flowing from an unpaid and final determination against a company.

**FACTS**

Mr. Nairoz Khan was employed by Burmestar Enterprises Ltd., operating as Burma Star cleaning Services. A determination was issued against the employer on September 1, 1999, in the amount of \$731.41 including interest. The determination was unpaid by the employer. The Delegate therefore issued a determination on February 17, 2000 in the amount of \$731.41 plus additional interest in the amount of \$16.41.

The Delegate determined that Mr. Win was a director of the employer, by reviewing a BC. Online Corporate Registry search print out. The Delegate determined that two months wages for Mr. Khan would amount to \$2,773.28. He came to this calculation by calculating the number of working hours per month (40 hours per week x 52 weeks per year / 12 months per year) at 173.33 hours per month, for two months, at an hourly wage of \$8.00 per hour.

The Delegate issued the Determination against Mr. Win in the full amount of the corporate determination, as according to the calculations of the Delegate the amount owing by the corporation was less than two months unpaid wages.

Mr. Win filed an appeal claiming that the payroll records indicate that Mr. Khan's employment was not continuous, and that the Delegate erred in determining the hours worked by Khan, and that the Determination was excessive and unsubstantiated. The record produced by Mr. Win shows that Mr. Khan worked 68.00 hours during the month of November 1997. The record is a summary document only, and does not indicate how that work was distributed for the month of November 1997.

**ISSUE**

Did the Delegate calculate incorrectly the amount due and owing by the corporate director to the employee?

**ANALYSIS**

In this case, the Determination against the company is a final Determination. It was not appealed. The corporate director could have participated in the investigation, and the corporation could have filed an appeal of the determination. On numerous occasions, this Tribunal has applied the doctrine of “issue estoppel” to prevent a director from questioning the underlying “correctness” of a corporate determination. On an appeal by a director of a company, of personal liability imposed under s. 96 of the *Act*, the director of a company cannot argue that the underlying corporate determination was incorrect. The only issues open for argument are whether the person appealing is a director of the company, and whether the calculation of the director’s liability is correct.

The *Act* provides in s. 96(1), that a person who is a director or officer of a company at the time that wages were earned or should have been paid, is liable for up to two months unpaid wages for each employee. In this case there is no question that Mr. Win was a director of Burmestar, at all material times. The Delegate calculated the obligation on the basis of \$8.00 per hour, for 173.33 hours per month (40 hours per week x 52 weeks per year /12months per year), and the Delegate arrived at a sum of \$731.41, plus additional interest in the amount of \$16.41 . This is a correct calculation of two months salary for an employee who earns \$8.00 per hour for a two month period, when that employee works a 40 hour work week.

The only argument raised by Mr. Win, is that the employee did not actually work 173.33 hours per month. It is my view that this argument that Burmestar should have raised in the Determination against the corporation, and the failure to raise that argument is fatal to the appeal before me.

**ORDER**

Pursuant to section 115 of the *Act*, the Determination dated February 17, 2000 is confirmed.

***Paul E. Love***

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**Paul E. Love**  
**Adjudicator**  
**Employment Standards Tribunal**