

An appeal

- by -

Roger Charles Morrissey, a Director or Officer of Island Mack Truck Sales Ltd.
("Morrissey")

- 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: Cindy J. Lombard

FILE No.: 2001/429

DATE OF DECISION: October 29, 2001

DECISION

OVERVIEW

This is an appeal by Roger Charles Morrisey (“Morrisey”) an officer and Director of the employer, Island Mack Truck Sales Ltd. (“Island Mack Truck Sales”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”) issued on May 15th, 2001. In that Determination, the Director found that Morrisey was personally liable as a director and officer of Island Mack Truck Sales, which had declared bankruptcy on February 20th, 2001, for wages, annual vacation pay and unrelated deductions for 16 complainant employees in the amount of \$68,883.72 including interest to the date of the Determination: See Schedule “A” (the “Determination”).

The Director issued an identical Determination in the same amount for wages, etc. owing to the sixteen employees for the same period of time, February 12 – 20, 2001, against William Peter Trynchy (“Trynchy”), another officer and director of Island Mack Truck Sales (the “Trynchy Determination”).

Following submissions by Morrisey and Trynchy that they had resigned as officers and directors on February 12, 2001, the calculations annexed to the Determination were amended by the Director with the result that the amount for which Morrisey was liable was reduced to \$25,919.43 (the “June 19, 2001 amendment”) and an identical amendment was made to the Trynchy Determination: See Schedule “B”

After the Director received \$14,073.49 from the Trustee in Bankruptcy for Island Mack Truck Sales Ltd. and it was disbursed to the employees, the Director reduced the amount owing by the two officers/directors, Morrisey and Trynchy, to \$37,765.37 or \$18,882.68 each (the “September 7, 2001 amendment”): See Schedule “C”.

Furthermore, an undated amended calculation of the Director indicates a total of \$9,009.97 owing (undated amendment): See Schedule “D”. The Director says that he does not know where this document came from.

The Appellant Morrisey (as does the Appellant Trynchy) appeals the Determination as amended on September 7, 2001, stating that the June 19, 2001 amendment determined that Morrisey was liable for \$25,919.43 on a joint and several basis with Trynchy (EST Decision # D587/01) not \$25,919.43 each or a total of \$51,838.86 and therefore after subtracting the amount of \$14,073.49 received from the Trustee in Bankruptcy from \$25,919.43 says Morrisey and Trynchy are liable to pay \$11,845.94 on a joint and several basis pursuant to Section 96 of the *Act*.

ISSUES TO BE DECIDED

What amount is Morrissey liable to pay in wages, vacation pay, unremitted deductions, etc., pursuant to Section 96 of the *Act*?

FACTS AND ANALYSIS

On March 30, 2001, the Director issued a Determination against the employer, Mack Truck Sales, in favor of sixteen of its employees following a declaration of bankruptcy by the employer finding that a total of \$221,243.025 was owing in wages, vacation pay, unremitted deductions and interest.

The Determination was subsequently made against the officer/director Morrissey in the amount of \$68,883.72 and an identical determination was made with respect to the officer/director Trynchy. The Director included a calculation of that amount with each Determination: See Schedule "A". The figure of \$68,883.72 included all monies owing to the sixteen employees.

Section 96(1) of the *Act* provides:

"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 two months unpaid wages for each employee."

It is appropriate for the Director to issue separate, i.e. several Determinations pursuant to Section 96 which in total exceed the total amount due to the employees but the Director cannot collect more than the actual amount of the unpaid wages due to the employees: See *Re Sharab Developments Ltd. and Fair Commercial* [2001] BC EST #D001/01.

Therefore, in this case, the Director did not error in issuing separate Determinations to Morrissey and Trynchy, which together exceed the total amount owing to the employees but cannot collect more than the actual amount owing.

However, it does appear on a review of the Director's calculation that he did error in the September 7, 2001 amendment: See Schedule "C".

The appellant is correct in stating that from the June 19, 2001 amendment (reducing the Determination and identical one to Trynchy from \$68,883.72 to \$25,919.43 each) the funds from the Trustee in the amount of \$14,073.40 should be subtracted (and not from two times \$25,919.43 or \$51,838.86) leaving a net total amount of \$11,845.94 owing to the employees. The Determination as well as that issued against Trynchy should be amended to indicate liability of \$11,845.94.

Therefore each determination is for the total amount owing to the employees. The Director has the right to pursue either or both Morrisey and Trynchy until the amount of \$11,854.94 is collected.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination with respect to Roger Charles Morrisey be amended to indicate an amount due of \$11,845.94 plus whatever further interest may have accrued pursuant to Section 88 of the *Act*.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal