

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 -

Nigel Glover
("Glover")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Ian Lawson
FILE No.:	97/648
DATE OF DECISION:	January 5, 1998

DECISION

OVERVIEW

This is an appeal by Nigel Glover ("Glover") pursuant to s. 112 of the *Employment Standards Act* (the "*Act*"). The appeal is from a Determination issued by Erwin Schultz, a delegate of the Director of Employment Standards on July 30, 1997. The Determination imposed liability on Glover for wages, termination pay and vacation pay owing to 13 former employees of 355567 B.C. Ltd., a company of which Glover was a director.

Glover filed an appeal on August 22, 1997. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

FACTS

355567 B.C. Ltd carried on business as Revelstoke Cedar Products, which operated a cedar remanufacturing plant in Revelstoke, B.C. On February 7, 1997, the Company terminated 13 workers on account of financial difficulties which the Company was experiencing. The employees filed complaints with the Director that some of them had not been paid wages for a period prior to termination, and that they had not received termination pay or holiday pay. On July 30, 1997 a Determination was issued by Erwin Schultz which awarded a total of \$22,026.02 payable in various amounts to each employee. On the same date, Mr. Schultz issued the Determination under appeal, which rendered Glover liable for this sum as a director of 355567 B.C. Ltd.

A company search carried out by the Director on June 6, 1997 revealed that 355567 B.C. Ltd. had two principals: Glover as Secretary and Mr. Frank Kaiser as President.

ISSUE TO BE DECIDED

This appeal requires me to decide whether Glover is liable for the wages, termination pay and vacation pay owing by 355567 B.C. Ltd. to the 13 terminated employees.

ANALYSIS

Glover raises no objection in this appeal to the calculation of the amounts owing to each employee set out in the Determination. Glover's submission is encapsulated in the following paragraph:

I am making this appeal because I was an inactive director of 355567 B.C. Ltd. I was not involved in the operation of the Company except as a minority shareholder/investor. I did not receive remuneration for this and only became a director because I was an investor. As such I do not deem myself to be held responsible for any indebtedness but for my investment. I resigned as director effective June 17, 1997 and sold my shares to Mr. Frank Kaiser as per the enclosed documents.

The *Act* imposes liability for unpaid wages on directors of corporate employers in certain circumstances. Section 96 of the *Act* reads as follows:

- 96.** (1) 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 months' unpaid wages for each employee.
- (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
- (a) any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,
 - (b) vacation pay that becomes payable after the director or officer ceases to hold office, or
 - (c) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1).

There appears to be no dispute that Mr. Glover was a director of 355567 B.C. Ltd. until his resignation on June 17, 1997. Section 96 of the *Act* makes no distinction between active or inactive directors and so Mr. Glover's submission on this point has no merit. With regard to the date of his resignation, it appears to be undisputed that the wages owing to each of the 13 employees arose prior to February 7, 1997 and so were incurred during the time of Mr. Glover's directorship within the meaning of section 96.

The definition of "wages" in the *Act* includes termination pay and so Mr. Glover is personally liable for termination pay owing by the Company. The only factor that would relieve Mr. Glover from liability for termination pay is receivership or bankruptcy of 355567 B.C. Ltd. There is no suggestion by Mr. Glover that the Company was in such a situation at the relevant time.

I therefore find that Mr. Glover has failed to produce any fact or argument that would cause me to doubt the correctness of the Determination under appeal.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Erwin Schulz is correct and the appeal should be dismissed. Pursuant to s. 115 of the Act, I order that the Determination dated July 30, 1997 is confirmed.

Ian Lawson
Adjudicator
Employment Standards Tribunal