

An appeal

- by -

Alnawaz Hasham, a Director or Officer of
Dan Foss Couriers (Island) Ltd.
("Hasham")

- 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: Norma Edelman

FILE No.: 2001/760

DATE OF DECISION: December 20, 2001

DECISION

OVERVIEW

This is an appeal by Alnawaz Hasham, ("Hasham") a Director or Officer of Dan Foss Couriers (Island) Ltd. ("Dan Foss") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") from a Determination issued by a delegate of the Director of Employment Standards on October 2, 2001. The delegate awarded Michael J. Cross ("Cross") the sum of \$947.72 representing wages, vacation pay and interest. Hasham appeals the Determination on the basis "...there should be no money owing to Mike Cross as he owes me more money that I owe him."

ISSUE TO BE DECIDED

Did the delegate err in determining that Hasham is personally liable for wages owed to Cross?

FACTS

Cross worked for Dan Foss from March 2001 to May 31, 2001 at a rate of pay of \$11.00 per hour.

Hasham does not dispute that Cross is owed the amount of wages that are set out in the Determination. Hasham says that he will not pay Cross because Cross owes him rent. Hasham has made an application to the Residential Tenancy Office regarding the dispute. Hasham says that he wants the money that the company owes Cross to be held in trust until the matter with the Residential Tenancy Office has been finalized.

ANALYSIS

The burden is on the Appellant, in this case Hasham, to demonstrate that there is an error in the Determination such that I should vary or cancel the Determination. I find that the burden has not been met in this case.

Section 96 of the *Act* states that a person who was a director or officer of a corporation at the time wages were earned or should have been paid is personally liable for up to two months of unpaid wages for each employee.

The Tribunal has consistently held that where a Determination has been issued pursuant to Section 96, the directors or officers on appeal are limited to arguing issues that directly arise from Section 96: Are they a director or officer of the corporation and is the amount of their personal liability properly limited to up to two months unpaid wages for each employee? A director or officer is estopped from arguing the merits of the liability of the corporation except where there has been fraud in the issuance of the corporate Determination or where there is

cogent new evidence not previously available: (*Steinemann*, BC EST#D180/96, *Perfecto Mondo Bistro* BC EST#D205/96, and *Seacorp Properties Inc.* BCEST #D440/97).

On October 2, 2001, the delegate issued a Determination against the corporation Dan Foss (the "corporate Determination"). That Determination was appealed and in a concurrent decision BC EST #D690/01 I confirmed the Determination.

In this appeal Hasham does not dispute that he is an officer or director of Dan Foss or that the amount of his personal liability has been incorrectly calculated. Furthermore, Hasham does not provide any allegation or evidence of fraud in the issuance of the corporate Determination, nor does he claim he has new evidence not previously available at the time of the issuance of the corporate Determination. Rather, he argues the merits of the liability of the corporation. Indeed, his reasons are identical to the reasons he submitted in his appeal of the corporate Determination.

As indicated above, I have already decided the appeal of the corporate Determination and I have upheld the amount of wages awarded to Cross.

Hasham is estopped from rearguing the merits of the liability of the corporation and given he has raised no arguments regarding the issues that directly arise under Section 96 his appeal of this Determination must fail.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated October 2, 2001 be confirmed together with any further interest calculated pursuant to Section 88 of the *Act*.

Norma Edelman
Adjudicator
Employment Standards Tribunal