

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-

Frederic C. Holmes

(“Holmes”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/383

DATE OF DECISION: September 9, 1998

DECISION

OVERVIEW

On November 13th, 1997 a delegate of the Director of Employment Standards issued a determination under file number 080-914 against Abbott Integration Systems Inc. (“Abbott”) pursuant to which Abbott was held liable for \$15,659.10 on account of unpaid wages, termination pay and vacation pay owed to its former employee, William Keegan (“Keegan”). I shall refer to this determination as the “corporate determination”.

Subsequently, on May 26th, 1998, the same delegate issued a determination, in the amount of \$9,166.67, against Frederic C. Holmes (“Holmes”) and again in favour of Keegan. This latter determination, which I shall refer to as the “officer determination”, was issued pursuant to section 96(1) of the *Employment Standards Act* (the “Act”) which provides 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.

The appeal now before me was filed with the Tribunal on June 17th, 1998 by counsel on behalf of Abbott Integration Systems Inc. This appeal, at least insofar as it relates to the corporate determination, is not properly before me. First, the time for filing such an appeal has long since expired (see section 112 of the *Act*). Second, and more fundamentally, the circumstances relating to Abbott’s appeal of the corporate determination have been already been considered in my decision, issued concurrently, in *Abbott Integration Systems Inc.*, EST Decision No. 372/98.

In my view, the June 17th notice of appeal does not even purport to relate to Holmes’ liability under the officer determination. So far as I can gather, each of the five “grounds of appeal” set out in the document appended to the appeal form relate solely to Abbott’s liability under the corporate determination. However, inasmuch as the Tribunal has indicated to Holmes and to the respondent parties that it was prepared to accept the June 17th notice of appeal as an appeal of the officer determination, I am similarly prepared to proceed on that basis. I also note that counsel for the Director does not appear to object to the June 17th notice of appeal being treated as an appeal by Holmes of the officer determination.

FACTS AND ANALYSIS

The delegate noted in the officer determination that Holmes was listed, in corporate records submitted to the Registrar of Companies, as both an officer and director of Abbott. There is nothing in the material before me to suggest that Holmes was not an officer or director as asserted by the Director’s delegate. Indeed, even if Holmes was *not* listed as an officer or director of Abbott, the various documents before me clearly show that, at the very least, Holmes carried out

the *functions* of a corporate officer and director and thus would be liable as such under section 96 in any event (see *Penner and Hauff*, EST Decision No. D371/96).

The only other bases upon which the officer determination might be challenged would be if the amount payable under the officer determination exceeded the “2-month” wage ceiling provided for in section 96(1) of the *Act* or if any of the other statutory defences set out in section 96(2) applied. Holmes has not challenged the officer determination on any of these latter grounds.

In essence, Holmes’ appeal is an undisguised attempt to re-open the corporate determination, however, this matter latter matter is now *res judicata*--see *Steinmann*, EST Decision No. D180/96 and *Perfekto Mondo Bistro*, EST Decision No. D205/96.

ORDER

Pursuant to section 115 of the *Act*, I order that officer determination be confirmed as issued in the amount of \$9,166.67 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal