



An appeal

- by -

Mason Trains Ltd.
(“Mason”)

- 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 (as amended)

TRIBUNAL MEMBER: Carol L. Roberts

FILE No.: 2011A/185

DATE OF DECISION: February 13, 2012

DECISION

SUBMISSIONS

Howard Mason	on behalf of Mason Trains Ltd.
Adrian R. Plant	on his own behalf
Justin P. Coutu	on his own behalf
Ed Wall	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Mason Trains Ltd. (“Mason”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued November 22, 2011.
2. Adrian Plant and Justin Coutu (“the employees”) were employed as machinists by Mason, a machine shop, for periods between January 2010 and November 2010. Both filed complaints with the Director alleging that Mason had contravened the *Act* in failing to pay all wages owing.
3. Following an investigation, the Director concluded that Mason had contravened section 18 of the *Act* in failing to pay the employees all wages owing. The Director’s delegate determined that the employees were entitled to wages and accrued interest in the total amount of \$25,324.50. The Director also imposed two administrative penalties in the amount of \$500 each for contravening section 46 of the *Employment Standards Regulation* (the “*Regulation*”), for a total amount payable of \$26,324.50.
4. Mason contends that the Director failed to observe the principles of natural justice in making the Determination and seeks to have it cancelled.
5. Section 36 of the *Administrative Tribunals Act* (“*ATA*”), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 17 of the Tribunal’s *Rules of Practice and Procedure* provide that the Tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This decision is based on the written submissions of the parties.

ISSUE

6. Whether or not the Director failed to observe the principles of natural justice in making the Determination.

FACTS

7. Each of the employees provided the delegate with similar evidence, alleging that they were unable to cash their wage cheques because there were insufficient funds in Mason’s account. One of the employees provided the delegate with a cheque dated June 4, 2010, that he had been unable to cash. The employee told the delegate that he continued to work for Mason because Mr. Mason told him he was going to close the business and sell the machinery and that the employee would be paid after the machinery was sold. The employees also reported that Mr. Mason had promised them a ten percent stake in a new business that would

be formed after the machinery was sold to compensate them for the hours worked, and provided the delegate with a copy of Mr. Mason's letter regarding that arrangement. No share transfer ever occurred. The employees reported that Mr. Mason did in fact sell his equipment for a large sum of money and that he continues to make money by selling model trains. One of the employees provided the delegate with a wage statement issued by Mason for the period October 3 – 22, 2010.

8. The employees also advised the delegate that Mr. Mason told them that new investors were purchasing a significant amount of shares in his company and that the new investors would be responsible for paying the employees' wages after October 1, 2010. One of the employees contacted those "new investors" and was told that no such arrangement had been made.
9. Mr. Mason is the sole director and officer of Mason.
10. The Director's delegate telephoned Mr. Mason on March 23, 2011, and advised him of the employees' complaints. The delegate also emailed Mr. Mason a copy of the complaints. Mr. Mason provided a brief response by email the same day.
11. On March 25, 2011, the delegate emailed Mr. Mason requesting specific information and a response to the complaints. On April 6, 2011, Mr. Mason emailed the Director to advise him that the employees had quit and voluntarily went to work for Power Mech and that he was unable to access the company computer to access the requested employee records.
12. On June 15, 2011, the Director sent a letter to Mr. Mason outlining the issues in the complaints and again requesting specific information. On June 23, 2011, Mr. Mason responded, outlining his view of the issues. On October 25, 2011, the Director issued a Demand for Employer Records by both regular and registered mail. Mason did not respond to this Demand.
13. Mr. Mason's position was that he encountered financial difficulties and closed his business on October 1, 2010. He advised the delegate that both employees went to work for the "new investors", a company operating as Power Mech. Mr. Mason told the delegate that in the summer of 2010, he advised the employees that he would be unable to meet his payroll obligations but if they were able to assist him in making the company profitable he would issue them ten shares in lieu of wages. In a later submission, Mr. Mason stated that he offered the employees five shares in return for making the company profitable. Mr. Mason contended that although the parties agreed to this arrangement, the employees put their efforts into making marijuana paraphernalia, further increasing his debts, so on October 1, 2010, he decided to close the business. Mr. Mason stated that he did not in fact issue either of the employees any shares because, as partners, they would also have been responsible for Mason's debt, which he indicated was approximately \$190,000.
14. Mr. Mason advised the delegate that he approached Power Mech to determine if it was interested in Mason's equipment and that Power Mech agreed to acquire the equipment in return for assuming Mason's debts. Mr. Mason advised the delegate that he signed "papers" to give effect to that agreement and that, after October 1, 2010, the employees became Power Mech employees. Mr. Mason advised the delegate that, between January and April 2011, he installed all Mason's equipment in Power Mech's shop, for which Power Mech owed him nearly \$40,000 for equipment and installation labour. Mr. Mason asserted that Power Mech subsequently changed the locks on its buildings and barred him from entering. Mr. Mason says he has no personal assets and that he is an old age pensioner.

15. Cranbrook Community Futures Association advised the delegate that Mason had defaulted on a loan and that it had taken possession of assets that Mr. Mason had used to secure that loan. Although Power Mech subsequently expressed an interest in purchasing the equipment, it ultimately did not do so and Community Futures seized and sold the equipment.
16. The delegate spoke to Mason's bookkeeper. She stated she was unaware of the business transactions between Mason and Power Tech. She also advised the delegate that all of the employer records were stored on a computer in Mr. Mason's office, that Mr. Mason still owed her money for services rendered and that she was no longer working for Mason.
17. The Director's delegate found Mason in contravention of section 46 of the *Regulation* in failing to produce or deliver Employer Records as demanded. The delegate found that Mason did not deny owing the employees' wages, acknowledging that it was unable to meet its payroll responsibilities. The delegate concluded that the employees were entitled to the wages they claimed.
18. The delegate noted that in the summer of 2010, Mason was unable to meet its payroll obligations so Mr. Mason promised to issue the employees shares in exchange for the employees' labour. The delegate considered Mr. Mason's letter to the employees outlining his intention to issue them shares in a new company and determined it to be an agreement. The delegate found no evidence shares were ever issued to the employees. The delegate determined that this arrangement was a contravention of section 20 of the *Act* which requires wages to be paid in Canadian currency, cheque, draft or money order, or by direct deposit. The delegate noted that section 4 of the *Act* bars any agreement which is contrary to the *Act*. The delegate placed no weight on the agreement other than to draw conclusions about the intentions of the parties.
19. The delegate also considered a wage statement on Mason letterhead dated October 22, 2010, noting that it contradicted Mr. Mason's assertion that the employment relationship between the parties ended October 1, 2010.
20. The delegate found, on the evidence before him, that the employees worked the hours they claimed during the period in question. In the absence of any evidence of wage payments made for that period, the delegate concluded that no wages were paid.

ARGUMENT

21. Mr. Mason contends that he had no access to payroll or taxation records, which were handled by hired office staff. He asserts that the relationship with his employees and the business deteriorated to such an extent that he decided to close the business effective October 2, 2010. He says that he entered into an agreement with Power Mech in which Power Mech was to acquire all the assets of the company in return for assuming Mason's debts and assuming management of the company. Mr. Mason submits that after the agreement was entered into, he moved all equipment, inventory and company records over to Power Mech's premises. He contends that some months later, a representative of Community Futures informed him that Power Mech was attempting to swindle him and persuaded him to sign over the ownership of the business to Community Futures, which he did. He contends that after entering into this agreement, he was locked out of the premises and had no access to records or personal items. Mr. Mason also says that he understands that all records have been disposed of. He says that Power Mech has left him with a significant debt that he is unable to recover and that he only has his old age pension to fall back on. He says that as of October 1, 2010, he was no longer in charge of the company and that he cannot be responsible for Mason's decisions after that date.

22. The delegate notes that Mr. Mason has never provided any evidence of any agreement to sell Mason to another corporation despite repeated requests for that evidence. The delegate contends that a BC corporate search confirms that as of March 11, 2011, Mr. Mason was still the sole director and officer of Mason. The delegate further states that Mr. Mason has never denied that Mason owes wages to the complainants nor has he contested the amounts.
23. Mr. Coutu submits that even though Mr. Mason thought Power Mech was going to purchase Mason, that sale never occurred and that Power Mech did not hire him or Mr. Plant. Mr. Coutu submits that he is owed wages for five months of work and seeks to have the Determination confirmed.
24. Mr. Plant also disagrees with Mr. Mason's submissions and seeks to have the Determination upheld. Mr. Plant also denies that he was hired by Power Mech.
25. In a reply submission, Mr. Mason says that he is unable to confirm or deny any of the allegations because Community Futures seized all his assets and records and prevented him from accessing his buildings.

ANALYSIS

26. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
- the director erred in law;
 - the director failed to observe the principles of natural justice in making the determination;
 - evidence has become available that was not available at the time the determination was made.
27. The Tribunal has consistently said that the burden is on an appellant to persuade the Tribunal that there is an error in the Determination on one of the statutory grounds.
28. Principles of natural justice are, in essence, procedural rights that ensure that parties know the case being made against them, the opportunity to reply, and the right to have their case heard by an impartial decision maker. Although Mason alleges a failure to comply with principles of natural justice as the ground of appeal, his written submissions have no bearing on that ground of appeal.
29. I am satisfied that Mr. Mason was provided with the details of the complaints and had full opportunity to respond to them. The record discloses that the delegate made many attempts to obtain records from Mr. Mason and provided Mr. Mason with an outline of the issues he had to respond to. The record also discloses that Mr. Mason did respond to the Director's inquiries, contending, in essence, that Mason was unable to pay the wages for a variety of reasons including financial difficulties and a sale of the business. The delegate rejected those explanations in light of contradictory evidence and in the absence of any corroborative evidence from Mason.
30. Mason's appeal submission consists, in essence, of a repetition of the assertions Mr. Mason provided to the delegate during the investigation. Mr. Mason provides no evidence in support of those assertions, as he failed to do before the delegate. Most importantly however, Mr. Mason has never denied owing the wages claimed.
31. It is clear that, by filing the appeal, Mr. Mason is simply hoping for a different result. An appeal is not an opportunity to re-argue the facts. The appeal submissions disclose no basis for interfering with the Determination.

32. The appeal is dismissed.

ORDER

33. Pursuant to section 115 of the *Act*, I order the Determination dated November 22, 2011, be confirmed in the amount of \$26,324.50, together with any interest that has accrued under Section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal