

An appeal

- by -

1849 Flying U Ranch Ltd.
("the Flying U")

- 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: David B. Stevenson

FILE No.: 2002/533

DATE OF DECISION: January 15, 2003

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by 1849 Flying U Ranch Ltd. (“the Flying U”) of a Determination that was issued on October 9, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded the Flying U had contravened Part 3, Section 18(1) and Part 7, Section 58 of the *Act* in respect of the employment of Stephen Rodger (“Rodger”) and ordered the Flying U to cease contravening and to comply with the *Act* and *Regulations* and to pay an amount of \$2369.78.

The Flying U says the Determination is wrong and should be canceled because all wage liability found owing to Rodger should be the responsibility of Paul Crepeau, a director/officer of the Flying U, and not the Flying U or any other director/officer of the Flying U.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ISSUE

The issue in this appeal are whether the Flying U has shown an error in the Determination sufficient to justify the Tribunal cancelling the Determination. More specifically, the issue is whether the Flying U has shown that the Determination erred in finding the Flying U was Rodger’s employer under the *Act*.

FACTS

The Determination sets out the following background;

- 1849 Flying U Ranch Ltd (Flying U) is a guest ranch in the Cariboo that is open to guests from April 1 to October 31 of each year.
- The Flying U was owned by Ron Fremlin Sr. for 20 years. The name of Ron Fremlin Sr.’s Company was Seaman’s Capital Corporation. Seaman’s Capital Corporation sold the Flying U to Paul Crepeau and John Fremlin. The business was registered by Paul Crepeau and John Fremlin under the name of Perry Flying U Ranch Ltd. Paul Crepeau and John Fremlin defaulted on their payments to Seaman’s Capital Corporation for the purchase of the Flying U.
- Seaman’s Capital Corporation or Ron Fremlin Sr. petitioned to the Courts to have Ron Fremlin Sr. appointed as Receiver and Manager of all the property, rights, assets, and business undertakings of the Flying U on April 10. On April 10, 2002 the Court ordered that Fremlin Sr. be appointed as receiver and manager of the Flying U.

The appeal indicates some of that background is incorrect and that a correct recitation of the background would include the following information:

- the Flying U Ranch was purchased by the Flying U in 1979;;

- in 1997, the shares of the Flying U were purchased by Ernie and Judy Perry;
- the shares were held in Trust/Escrow by Seaman's Capital Corporation (presumably until the financial aspects of the share purchase agreement were concluded);
- in February 1999, the Perry's defaulted on the share purchase for the Flying U;
- in April 1999, Paul Crepeau acquired an interest in the Flying U (although the appeal does not indicate how interest was acquired, it appears to have been through a share purchase agreement);
- Paul Crepeau, not Paul Crepeau and John Fremlin, defaulted on the share purchase;
- under the terms of the share purchase agreement, Ron Fremlin Sr. became the Receiver-Manager of the Flying U; and
- Seaman's Capital Corporation has not held any interest in the Flying U; it has remained throughout as the Trust/Escrow entity.

The issues in the Determination were whether Rodger was owed vacation pay, regular wages or compensation for length of service and, if he was owed any of those things, who was responsible under the *Act* for payment of the resulting amounts.

On behalf of the Flying U, Ron Fremlin Sr. did not dispute that Rodger was owed annual vacation pay, but took the position that Rodger's employer was not the Flying U, but was Paul Crepeau and Perry Flying U Ranch Ltd., not the Flying U. The Determination concluded Rodger was owed regular wages for the month of November 2001 and annual vacation pay for the 2001 season. It concluded he was not entitled to length of service compensation. A copy of a corporate search of the Registrar of Companies, done on May 8, 2002 and filed with the submission of the Director, showed the directors and officers of the Flying U as being Ronald H. Fremlin Sr., John C. Fremlin and Paul Crepeau. The Corporate Search indicates the last annual report date was November 23, 2001.

A Record of Employment issued to Rodger on or about November 30, 2001 over the signature of Tess Tom-Fremlin (identified in the material as John Fremlin's wife) named the employer as "1849 Flying U Ranch Ltd." and the "last day for which paid" as November 30, 2001.

In his submission in response to the appeal, Rodger has indicated, among other things, that John Fremlin was involved in the day to day management of the ranch.

ARGUMENT AND ANALYSIS

The argument made in this appeal by Mr. Fremlin Sr. is a bit obscure, but I perceive that the objective of the appeal is for the Tribunal to confirm that Mr. Crepeau, and only Mr. Crepeau, as "the Director, Chief Executive Officer of 1849 Flying U Ranch Ltd." should solely be held responsible for the wage liability to Rodger. In effect, Mr. Fremlin Sr., acting on behalf of the Flying U, is saying the Determination was wrong in concluding the Flying U was Rodger's employer for the purposes of the *Act*.

In reply, the Director points out that the Flying U was found to be the employer for the purposes of the *Act* based on the Record of Employment and other information received during the investigation of the

complaint. In his reply, Rodger also points to the Record of Employment issued to him as indicating the Flying U was his employer and says, among other things, that at all material times he took daily direction in his work from John Fremlin.

If it is the position of Mr. Fremlin Sr. in this appeal that the Flying U was not the employer, he must provide information showing there is an error in the Determination on that point. In addition to the material on file, Mr. Fremlin Sr. has provided a Court Order, issued on the 25th of March, 2002, appointing Mr. Fremlin Sr. as the Receiver and Manger of the property and affairs of the Flying U and a copy of a “Formal Resignation” of employment signed by Rodger on or about December 10, 2001.

The former document says nothing about whether the Flying U was Rodger’s employer. In respect of the latter document, I agree with the Director that Rodger’s resignation has little direct effect on the findings made in the Determination, as Rodger was found not to be entitled to length of service compensation. The document does however lend support to the conclusion that Rodger’s employment was with the Flying U. The first line of the document says, “I hereby resign my position with 1849 Flying U Ranch, Ltd.”. The document was provided to Rodger for his signature by Mr. Fremlin Sr.

Against the conclusions found in the Determination (which are firmly supported by material on file), there is no evidence from Mr. Fremlin Sr., acting on behalf of the Flying U, that either Mr. Crepeau, in his personal capacity, or the Perry Flying U Ranch Ltd. was the employer. As the Flying U has failed to show any error in the Determination and the conclusion made by the Director is otherwise supported on the material in the file, the appeal fails on that point.

The appeal also raises questions about whether any wages were owed to Rodger for work he may have performed in November 2001. The appeal says:

If Rodger worked in the month of November, 2001, he did as other staff did, for room and board.

It is well established that the definition of wages does not *per se* include the value of room and board and, absent compliance with the requirements of Section 22 of the *Act*, the value of room and board may not be deducted from wages (see *Director of Employment Standards*, BC EST #D361/00 (Reconsideration of BC EST #D470/99 and BC EST #D151/00). Nothing has been provided that would show compliance with the requirements of Section 22.

There was a reference in the Determination to Wiremix Media Inc. The appeal says there is no connection between the Flying U and Wiremix Media Inc. The Director has indicated that reference was a typographical error which should be corrected. I accept the explanation of the Director that the reference was a typographical error and I find the mistaken reference to be only a technical irregularity. It does not invalidate the Determination and may be corrected.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated October 9, 2002 be confirmed in the amount of \$2369.78, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal