

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-

HBN Home Base Network Inc.
("HBN ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: C. L. Roberts

FILE NO: 98/731

DATE OF DECISION: January 26, 1999

DECISION

This is a decision based on written submissions by Tim Agar on behalf of HBN Home Base Network Inc., Eric Ronse, delegate of the Director of Employment Standards, and Byron McDonald.

OVERVIEW

This is an appeal by HBN Home Base Network Inc. ("HBN"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued October 28, 1998. The Director found that HBN contravened Section 58(4) of the *Act* in failing to pay Byron McDonald ("McDonald") wages and vacation pay, and Ordered that HBN pay \$2,103.37 to the Director on behalf of McDonald.

ISSUE TO BE DECIDED

Whether the Director correctly determined that McDonald was an employee, not an independent contractor.

FACTS

McDonald was associated with HBN from November 1995 to February 16, 1998. On February 2, he filed a complaint with the Director, claiming unpaid vacation pay and wages for the period February 9 through 16, 1998.

Following an investigation and a review of the relationship between the parties, the Director's delegate determined that McDonald was an employee of HBN. He further determined that since HBN had not disputed the amount of the claim, only his entitlement to it, McDonald was entitled to the vacation pay claimed. The Director's delegate also found that McDonald was entitled to wages for the period claimed.

ARGUMENT

HBN contends that the Director's delegate erred in finding that McDonald was an independent contractor. It contends that McDonald held himself out as, and at all times sought to maintain his status as, an independent contractor. HBN also contends that McDonald was fully paid.

HBN contends that McDonald's relationship was terminated due to "inadequate performance of his changes and numerous very costly mistakes. It was only after the relationship was ended, did McDonald make a claim to have been an employee."

HBN's submissions focus on an apparent dispute between Revenue Canada and McDonald over, among other things, employment insurance benefits.

McDonald argued that his status as an employee was confirmed by Revenue Canada rulings. Both he and the Director's delegate argue that HBN's grounds of appeal are unrelated to the determination, and seek a dismissal of the appeal.

ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

HBN's grounds of appeal are unrelated to the Determination. The Director's delegate found that McDonald was an employee rather than an independent contractor. There was no evidence provided to support HBN's position that the determination is in error on this point.

The allegations over McDonald's employment insurance benefits are of no relevance to the issue of whether he was an employee or an independent contractor.

Having no evidence to support HBN's contention that there was no employee - employer relationship, I dismiss the appeal.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination dated October 28, 1998 be confirmed in the amount of \$2103.37, together with whatever further interest that may have accrued, pursuant to Section 88 of the Act, since the date of issuance.

Carol Roberts
Adjudicator
Employment Standards Tribunal