



An appeal

- by -

Avondale and Associates Protective Services Ltd. and Response Force Security Ltd.
(“Avondale”)

Keith Olstrom, a Director or Officer of Avondale and Associates Protective
Services Ltd. and Response Force Security Ltd.
(“Olstrom”)

- 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: April D. Katz

FILE No.: 2000/526 and 2000/710

DATE OF DECISION: January 18, 2001

DECISION

SUBMISSIONS:

For the Employer	Keith Olstrom
For the Employees	James Wilson, Rischca Boutilier, Faroon Abdul Aziz
For the Director	Terry Hughes

OVERVIEW

The Director of Employment Standards (the "Director") issued a Determination against Avondale and Associates Protective Services Ltd. and Response Force Security Ltd. ("Avondale") jointly as associated companies on July 6, 2000. The Determination awarded \$38,652.10 to 9 former employees, James Wilson, John (Sandy) Roberts, Carol Clare, Scott Stratton, Faroon Aziz, Valeriy Artemov, William Carey, Rishca Boutilier and Lorraine Smith, (the "Respondents") for unpaid wages, unpaid vacation pay, statutory holiday pay, and statutory holiday pay.

A second Determination made against Keith Olstrom, a Director or officer of Avondale and Associates Protective Services Ltd. and Response Force Security Ltd. ("Olstrom") for \$32,636.68 was issued on July 6, 2000. The Director satisfied this claim against the assets of Keith Olstrom as a Director. Olstrom filed a timely appeal this Determination on July 31, 2000.

Avondale filed an appeal on August 3, 2000. The time for filing an appeal had expired. The Tribunal granted an extension of time for this appeal. This decision concerns the merits of the Determination issued against Avondale and the Determination issued against Olstrom.

ISSUE

Did the Director error in finding

- a) that James Wilson was owed \$15,378 for unpaid wages and commissions by Avondale and \$9362.76 by Olstrom;
- b) that John (Sandy) Roberts was owed \$5,243.47 for unpaid wages;
- c) that Carol Clare is owed \$2721.87 in unpaid wages due to NSF pay cheques;
- d) that Scott Stratton is owed \$1,237.19 for unpaid wages;

- e) that Faroon Aziz is owed \$1,279.79 for unpaid wages and overtime;
- f) that Valeriy Artemov is owed \$7,192.69 for unpaid wages and vacation pay;
- g) that William Carey is owed \$2,572.00 for unpaid wages;
- h) that Rishca Boutilier is owed \$2,476.80 for unpaid wages, vacation pay and compensation for length of service; or
- i) that Lorraine Smith is owed \$550.11 for unpaid wages.

FACTS

On May 25, 2000 the Director's Delegate wrote to Avondale advising of 6 employees' complaints. In the letter the Delegate provided Avondale with substantial details of the complaints and Avondale was asked to provide employment records. On June 1, 2000 Avondale was sent a letter, which advised Avondale of an additional complaint, restated the previous request for employment records and included an additional request for information in relation to the employment of the new complainant. Each of the letters set out the employees' individual claims in great detail with dates of NSF salary cheques and the specifics of other claims. The NSF salary cheques were from December 1999, January 2000, February 2000, March 2000, April 2000 and May 2000. The claims for overtime pay and vacation pay were for the same period.

Avondale responded on June 19, 2000 in a general letter to the Delegate plus specific letters for each complaint. None of the records requested were provided. In the letter to the Delegate, Avondale offered to settle all the claims for a one lump sum payment. Avondale indicated that the employer was not in a financial position to pay the claims in full.

Avondale indicated that if the employees did not accept the offer, Avondale would need to declare bankruptcy and there might be no money to pay anyone. The offer to settle with the employees expired on June 30, 2000.

Avondale's letters for each claim acknowledged responsibility for the NSF salary cheques and some of the other claims. Each letter had a proposal for a smaller lump sum payment reiterating Avondale's poor current financial circumstances. Some claims were acknowledged in full.

The aspects of specific claims that Avondale specifically disputed were addressed in the Determinations.

A letter advising that there were two additional complaints and enclosing a Demand for Employer Records was sent on June 23, 2000. The deadline for a reply was June 30, 2000.

The Determinations, one against Avondale and one against the Olstrom, were completed and each sent separately to 3 different locations by registered mail on July 6, 2000.

On July 6, 2000 Avondale sent two letters concerning the latest complainants to the Delegate by courier. No payroll records were provided.

The money to satisfy the claims was obtained from Keith Olstrom's personal assets and is held in trust by the Director. The amount owing under the Determination against Olstrom is \$26,105.62 as a result of the three employees no longer pursuing their claims.

ANALYSIS

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the evidence from the appellant must demonstrate some error in the Determination, either in the facts accepted, the factual conclusions reached or in the Director's analysis of the applicable law.

The greatest difficulty with these appeals is that Avondale and Olstrom did not provide any records to refute the claim of the employees.

Avondale has not provided any evidence to dispute the claims of the employees.

Avondale's letter of appeal dated July 29, 2000 states that Avondale's appeal is based on "an error of law and failure to comply with the principles of natural justice." The letter goes on

"there has been additional evidence which has become available that would have led the adjudicator to a different decision or would have significantly changed the final determination."

The Tribunal does not consider evidence that was available during the investigation and not provided to the Director's Delegate. The only evidence that is considered is new evidence that was not available during the investigation. No evidence was provided with the appeal documents. The Director's Delegate did not receive any payroll records to refute the employees' claims and there is no evidence with this appeal.

The July 29, 2000 letter then states Avondale is entitled to a hearing where it can cross examine the employees based on the

"Rules of Evidence of the Supreme Court . . . as the employer has reasonable and probable grounds to believe that [the employees] have provided false statements or fact to the adjudicator".

There is no evidence provided about what facts are in dispute or any specifics of allegations of false statements. The letter does not provide any specifics of any evidence or denial of natural justice. There is no evidence with respect to any of the claims in the materials before me, which would support a finding of an error on the facts or the law in the Determination.

After receiving the submissions of the employees and the Director's Delegate Olstrom wrote to the Tribunal on September 11, 2000 in which Avondale alleges "bad faith, impartiality and unfair bias" against the Director. He and Avondale allege that they have been unable to provide evidence to support their appeals because their evidence was not provided by the Director and is subject to a request for release under Freedom of Information and Privacy Application.

The letter refers to the submissions from James Wilson, Rishca Boutillier, Faroon Aziz, but does not give any evidence to refute the findings in the Determination. The letter makes allegations against two of the individuals that have nothing to do with the claims for wages, vacation pay, commissions and overtime which are the subject matter of the Determination.

The letter of September 11, 2000 contains allegations of prejudice and bias against the Employment Standards Branch and the Director's Delegates involved in the investigation but there is no evidence to refute the claims made by the employees. Avondale has not provided payroll records or other documentation to assist in a finding that the employees' claims are wrong. Avondale has admitted to owing the NSF wage cheques. The commissions, vacation pay claims and compensation for length of service are based on the records provided to the Delegates. There is no evidence to refute the findings in the Determination against Avondale.

Olstrom has provided no evidence to dispute that he was a director of Avondale at the time wages were earned or should have been paid to James Wilson, John (Sandy) Roberts, Carol Clare, Scott Stratton, Faroon Aziz, Valeriy Artemov, William Carey, Rishca Boutilier and Lorraine Smith. He has provided no evidence to challenge the conclusion of the Director's delegate that the wages payable under the Determination are within the limit on wages for which a director is liable under the *Act*. Further, the exceptions set out in Section 96(2) do not apply in this case. As a result, I conclude that the Determination issued against Olstrom is not in error.

CONCLUSION

Avondale and Olstrom have failed to discharge the onus of proof required to set aside the Determination. Based on the evidence presented I find no evidence on which to conclude that the Director's Determinations were in error.

Avondale settled the claims of Carol Claire, William Carey and Scott Stratton. As a result of the settlements the Director's Determination against Avondale is \$33,358.23 and against Keith Olstrom is \$26, 105.62.

I vary the Determination as follows

- a) that James Wilson is owed \$15,378 for unpaid wages and commissions by Avondale and \$9362.76 by Keith Olstrom;
- b) that John (Sandy) Roberts is owed \$5,243.47 for unpaid wages;
- c) that Faroon Aziz is owed \$1,279.79 for unpaid wages and overtime;
- d) that Valeriy Artemov is owed \$7,192.69 for unpaid wages and vacation pay;
- e) that Rishca Boutilier is owed \$2,476.80 for unpaid wages, vacation pay and compensation for length of service; and
- f) that Lorraine Smith is owed \$550.11 for unpaid wages

plus interest pursuant to section 88 of the *Employment Standards Act*.

Avondale's appeal is denied. Keith Olstrom's appeal is denied.

ORDER

Pursuant to section 115 of the *Employment Standards Act*, the Determination against Avondale is varied to \$33, 358.23 and the Determination against Olstrom is varied to \$26, 105.62, plus interest pursuant to Section 88 of the *Act*.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal