Employment Standards TRIBUNAL

An appeal

- by -

Canwood International Inc.
("Canwood")

- 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: David B. Stevenson

FILE Nos.: 2008A/148 and 2008A/149

DATE OF DECISION: March 2, 2009

DECISION

SUBMISSIONS

James Matkin	on behalf of Canwood International Inc.
Ib Petersen	on behalf of Olaf Bork
Andres Barker	on behalf of the Director of Employment Standards

OVERVIEW

1. This decision addresses appeals filed under Section 112 of the *Employment Standards Act* (the "*Act*") by Canwood International Inc. ("Canwood") of a Determination issued by a delegate of the Director of Employment Standards (the "Director") on November 12, 2008 (the "corporate Determination") and a Determination issued by the Director on December 12, 2008 (the "director/officer Determination").

2. The Determinations were made in respect of a complaint filed by Olaf Bork ("Bork"), who alleged Canwood had contravened the *Act* by failing to pay a bonus. The corporate Determination found that Canwood had contravened Part 3, section 17 of the *Act* and ordered Canwood to pay Bork an amount of $64,600.24, an amount which included wages and interest.

3. The Director also imposed an administrative penalty on Canwood under Section 29(1) of the E*mployment Standards Regulation* (the "*Regulation*") in the amount of $500.00.

4. The total amount of the corporate Determination is $65,100.24.

5. The corporate Determination was issued following a complaint hearing which was conducted on September 9, 2008.

6. The director/officer Determination found James Matkin ("Mr. Matkin") was a director and officer of Canwood at the time wages were earned and under section 96 of the *Act* is liable for an amount of $13,520.00.

7. Canwood, and Mr. Matkin, in his personal capacity as a director/officer of Canwood, says the Director committed several errors of law in making the Determinations. The following errors are identified and elaborated upon in the appeal and the accompanying submission:

    1. Canwood is a federally regulated enterprise and the Director erred in assuming jurisdiction over the employment claim filed by Bork under the *Act*;

    2. Alternatively, the Director erred in finding Bork was an employee of Canwood under the *Act* on October 24, 2007, which was the date of the alleged contravention;

    3. Alternatively, the Director erred in assuming jurisdiction over the complaint because Bork had the most influence on the direction of the company and, in effect, was a "controlling mind" of the company;

4. The Director erred in the interpretation of the "comfort letter" dated April 27, 2007;

5. Alternatively, even if the "comfort letter" could have been interpreted as an agreement to pay Bork a bonus, the Director erred in not deciding the bonus was conditional on the financial ability of the company to pay it;

6. Alternatively, the Director erred in failing to interpret the agreement in the context of the changing employment relationship;

7. Alternatively, the Director erred in not deciding the payment of the bonus required formal approval of Canwood's Board of Director's; and

8. Determinations made against the Directors of Canwood are flawed[1].

8. While not identified as a ground of appeal, Canwood has submitted evidence with the appeal that was not provided to the Director during the complaint process.

9. On January 20, 2009, Canwood submitted additional documents to the Tribunal and in its February 9, 2009 submission added two additional grounds of appeal. The first added ground of appeal alleges the reply submission made by the Director to the appeal is a breach of natural justice. The second argues the Director may not correct a purported error in the wording in the Determination under section 123 of the *Act*.

10. Canwood also seeks a suspension of the effect of the corporate Determination under section 113 of the A*ct* pending a decision on this appeal.

11. In its final submission, Canwood has requested an oral hearing on the appeal, citing the "complexity of the issues". The Tribunal has a discretion whether to hold a hearing on an appeal and, if a hearing is considered necessary, may hold any combination of written, electronic and oral hearings: see Section 36 of the *Administrative Tribunals Act* ("*ATA*"), which is incorporated into the *Employment Standards Act* (s. 103), Rule 17 of the Tribunal's Rules of Practice and Procedure and *D. Hall & Associates v. Director of Employment Standards et al.,* 2001 BCSC 575. In this case, the Tribunal has reviewed the appeal, the submissions and the material submitted by all of the parties, including the Section 112 (5) record filed by the Director, and has decided an oral hearing is not necessary in order to decide this appeal. The Tribunal does not accept the issues engaged in this appeal are sufficiently complex to justify the expense and delay of an oral hearing.

ISSUE

12. The issues raised in this appeal are whether the Director committed any error of law, or any other reviewable error, in making the Determinations.

[1] While this ground of appeal refers to several director/officer Determinations, the appeal includes only one such Determination. I will, for the purpose of dealing with this appeal, accept there are other, similar, director/officer Determinations against persons other than Mr. Matkin.

THE FACTS

13. The corporate Determination sets out the following description of the business of Canwood and the origins of the complaint made by Bork:

> Canwood is a corporation founded in 2005 whose business objective was to export lumber from British Columbia to foreign markets, with a specific focus on trees which had been affected by the mountain pine beetle. The main concept of the company was to source wood from First Nations' land to China. Mr. Bork was one of the initial 5 directors and was part of the team that started the company. Canwood would eventually come to have 5 directors; . . . . Most meetings and executive decisions made were between Mr. Matkin, Mr. Lao and Mr, Chau, sitting as a 3 person Board of Directors ("the Board").
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> Shortly after the creation of the company it became apparent to Mr. Bork that he was unable to support himself financially with the existing arrangement and so it was agreed that he would become Canwood's only full-time employee. He was deregistered as a director of Canwood, but he carried the title of Vice-President of Sales and Marketing. In a meeting in early September, 2005 Canwood's Board approved a salary of $4,500 per month. Mr. Bork did not own any shares in the company.
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> In 2005, Canwood started the creation of a permanent log sort yard with the purchase of 80 acres in Kersley, located in the Caribou Region of British Columbia. Industrial vehicles and equipment were purchased and a government approved scale was installed.
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> Mr. Bork was heavily involved in negotiations to get a rail spur built for the Kersley yard. The installation of a rail spur was essential for the transportation of logs from the interior to the coast for export, and Mr. Bork's negotiations were aimed at the novel initiative of the creation of a rail spur at the partial expense of CN Rail.
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> . . .
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> Prior to the completion of the rail spur, the Board imposed a wage, consulting and expense freeze, resulting in Mr. Bork's lay off. After this point, it was agreed between the parties that Mr. Bork would continue working on a contract basis and would cease to be an employee of Canwood. The agreement was that Canwood would pay up to $1,000 per month for expenses, and allow Mr. Bork the use of a company truck. Expenses were submitted to Canwood and Canwood leased the truck with Mr. Matkin co-signing this agreement. This new employment arrangement proceeded forward as of September 20, 2007. At the beginning of Spring, 2008, it was agreed that Mr. Bork and Canwood would cease their relationship due to the ongoing financial difficulties the company was facing.
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> During the course of negotiations with CN Rail, Mr. Bork and Mr. Matkin discussed the granting of a bonus for the completion of the rail spur, although there is disagreement as to the conditions to be met for the bonus to be payable.

14. The Director accepted there was an agreement that Canwood would pay Bork a bonus when the rail spur was completed. Bork contended that completion was the only condition for payment. Canwood did not dispute an agreement to pay a bonus, but argued the bonus was discretionary, required the formal approval of the Board and was subject to several conditions, including Canwood's financial success, completion of the rail spur according to initial projections and Bork's continued employment at the time of its completion.

15. The corporate Determination identified the issues as being whether Bork was an employee of Canwood for the purposes of the *Act*, what the terms of the bonus were and whether Matkin had the authority to grant Bork the bonus and whether Bork was aware of any limitation of authority.

16. Canwood raised no issue regarding the constitutional jurisdictional authority of the Director over the claim filed by Bork during the complaint process. That does not preclude Canwood from raising the issue on appeal. The Tribunal has said in other cases that the question of whether the Director had the constitutional jurisdiction to make the Determination is a matter that can properly be raised at any stage of the process and must be addressed because jurisdiction over the employment relationship is fundamental to the validity of the Determination: see, for example, *Carol Lacroix and Kevin Lacroix operating Lone Wolf Contracting*, BC EST #D230/97 (Reconsideration of BC EST #D267/96) and *More Marine Ltd. and More Management Ltd. and MoreCorp Holdings Ltd.*, BC EST #RD118/08.

17. The Director found Bork was an employee of Canwood for the purposes of the *Act* during the relevant period and continued to be an employee under the *Act* until the spring of 2008. The Director made an alternative finding on this issue to the effect that even if Bork had ceased to be an employee of Canwood three weeks before the rail spur was completed, that circumstance would have no affect on his entitlement to the bonus.

18. The corporate Determination examined the evidence relating to the bonus and found that successful completion of the rail spur the only condition attached to the payment of the bonus by Canwood to Bork. The Director found no direct evidence of any other terms or conditions attached the payment of the bonus.

19. The Director found Matkin had the authority to grant Bork the bonus without the formal approval of the Board and that Bork was entitled to accept he had that authority.

20. The director/officer Determination found that Mr. Matkin was a director and officer of Canwood at the time wages owed to Bork were earned and should have been paid. The Director calculated the personal liability of Mr. Matkin under section 96 of the *Act* at $13,520.00.

ARGUMENT AND ANALYSIS

21. As a result of amendments to the *Act* which came into effect on November 29, 2002, the grounds of appeal are statutorily limited to those found in Subsection 112(1) of the *Act*, which says:

> *112. (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*
>
> *(a) the director erred in law:*

> *(b) the director failed to observe the principles of natural justice in making the determination;*
>
> *(c) evidence has become available that was not available at the time the determination was made.*

22. The Tribunal has consistently indicated that the burden in an appeal is on the appellant to persuade the Tribunal there is an error in the Determination under one of the statutory grounds.

23. The *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST #D260/03.

24. Canwood alleges the Director made several errors of law in the Determinations. They are listed above. In support of some of the arguments made, Canwood has submitted evidence that was not provided to the Director during the complaint process. Some of these documents go to the constitutional jurisdictional argument.

25. I shall first deal with the new evidence provided, some of which was provided with the appeals and some of which was provided in later submissions. In dealing with this new evidence, I do not include in this analysis assertions of fact made in the submissions of Canwood, or any party for that matter, that are inconsistent with the findings of fact made in the Determinations. That kind of new "evidence" is neither acceptable nor accepted.

26. The Tribunal has consistently taken a relatively strict view of what will be accepted as new, or additional, evidence in an appeal, indicating in several decisions that this ground of appeal is not intended to be an invitation to a dissatisfied party to seek out additional evidence to supplement an appeal if that evidence could have been acquired and provided to the Director before the Determination was issued. The Tribunal has discretion to allow new or additional evidence. In addition to considering whether the evidence which a party is seeking to introduce on appeal was reasonably available during the complaint process, the Tribunal considers whether such evidence is relevant to a material issue arising from the complaint, whether it is credible, in the sense that it is reasonably capable of belief, and whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the Determination (see *Davies and others (Merilus Technologies Inc.)*, BC EST #D171/03 and *Senor Rana's Cantina Ltd.*, BC EST #D017/05).

27. The evidence which Canwood seeks to introduce into this appeal comprises the following documents:

> (a) an unsigned Memorandum of Understanding between Saik'uz First Nation and Canwood;
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> (b) a signed Memorandum of Understanding, dated the 5th of October, 2006, between those parties;
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> (c) an invoice from SCC Contracting Ltd. to Saik'uz First Nation, dated February 26, 2007, for trucking costs related to a "Pilot Project" for Canwood;
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> (d) an e-mail appearing to be from CN Rail to Canwood concerning a disputed invoice submitted by Canwood;

(e) a transportation agreement between CN Rail and Canwood, effective July 1, 2007;

(f) a letter, dated August 15, 2007, to Canwood from the lawyers for CN Rail concerning a right of way and siding agreement between those parties and a related attachment;

(g) letters, dated March 27, 2008 and June 16, 2008, to Canwood from the lawyers for CN Rail concerning a right of way and siding agreement between those parties and enclosing documents relating to that agreement;

(h) a copy of the Certificate of Judgment registered by the Director in this matter against the property of Canwood and notice of the same to Canwood; and

(i) copies of e-mail exchanges between an individual identified as a salesperson for CN Worldwide and Canwood, dated January 25 and 28, 2008.

28. The documents listed as (a) to (d) were submitted with the appeal; the other documents were submitted with a communication to the Tribunal dated January 20, 2009.

29. Canwood submits that the documents identified in points (a and (b), above, demonstrate a "partnership" with First Nations and go to the argument that the business of Canwood falls under federal jurisdiction under Section 91(24) of the Constitution Act 1867: Indians, and Lands reserved for the Indians. The relevance of the documents identified in points (c) and (d) is not explained and is not apparent.

30. The latter group of documents are filed on the basis that they "show the relationship [between CN and Canwood] contractually was much more in the way of a [sic] international joint venture to export logs".

31. Except for the documents which are intended to provide the basis for the constitutional jurisdictional argument, I am not inclined to accept the "new" evidence submitted in this appeal, for several reasons. First, it is apparent this evidence was reasonably available and, except for the documents relating to the Director's enforcement proceedings, could have been produced during the complaint process. As for the enforcement documents, they have no relevance to the appeals. Second, the relevance of those documents to the chosen grounds of appeal has not been established. Third, Canwood has not shown the documents are probative in the sense that they could have led the Director to the conclusion for which they are proffered.

32. As for the documents which have been provided in support of the constitutional jurisdictional argument, I will accept those documents and will consider the extent to which they support this aspect of the appeal.

The Constitutional Question

33. That result should not be taken as an acceptance of assertions made that are based on these documents. The failure of Canwood to raise the constitutional jurisdictional issue during the complaint process typically has the effect of limiting the factual foundation for the question which must be considered and that is the case here. In *More Marine Ltd. and More Management Ltd. and MoreCorp Holdings Ltd.*, *supra*, the Tribunal considered an application for reconsideration that for the first time raised an issue of

the constitutional jurisdiction of the Director to issue a Determination in respect of wage claims filed by two individuals and made the following comments:

> The issue here is one of the constitutional jurisdiction of the Director over the complaint, both in the sense of jurisdiction over the employment of the individuals and over the business of MorCorp. It is well established that to determine constitutional jurisdictional issues, certain kinds of "constitutional facts" are required. In each case a constitutional jurisdictional question involves a functional, practical judgment about the factual character of the undertaking (see *Arrow Transfer Co. Ltd.* [1974] 1 Can. L.R.B.R. 29).
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> The presentation of a set of facts is essential to an analysis of the constitutional jurisdictional question, as noted in the following comments from the Supreme Court of Canada in *Northern Telecom Ltd. v. Communication Workers of Canada*, [1980] S.C.R. 115:
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> > One thing is clear from the earlier discussion of the applicable constitutional principles. In determining whether a particular subsidiary operation forms an integral part of the federal undertaking, the judgment is, as was said in *Arrow Transfer*, a "functional, practical one about the factual character of the ongoing undertaking". Or, in the words of Mr. Justice Beetz in *Montcalm*, to ascertain the nature of the operation, "one must look at the normal or habitual activities of the business as those of 'a going concern', without regard for exceptional or casual factors" and the assessment of those "normal or habitual activities" calls for a fairly complete set of factual findings.
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> The burden is on MoreCorp to provide the factual basis for a conclusion that the Director and the Tribunal had no jurisdiction over the employment of McMillan and Worth and that the business of MoreCorp is one which is federally regulated. I refer to a further comment from the Supreme Court in the *Northern Telecom Ltd.* case which applies here and which I adopt it in the context of this application:
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> > I am inclined toward the view that, in the absence of the vital constitutional facts, this Court would be ill-advised to essay to resolve the constitutional issue which lurks in the question upon which leave to appeal has been granted. One must keep in mind that it is not merely the private interests of the two parties before the Court that are involved in a constitutional case. By definition, the interests of two levels of government are also engaged. In this case, the appellant did not apply to the Court, pursuant to Rule 17 of the Supreme Court Rules, for the purpose of having a constitutional question stated. If the appellant had intended to raise a question as to the constitutional applicability of the Canada Labour Code, then the obligation was upon the appellant to assure that the constitutional issue was properly raised. As no constitutional question was stated nor notice served upon the respective Attorneys General, the Court lacks the traditional procedural safeguards that would normally attend such a case and the benefit of interventions by the governments concerned.

34. One of the tasks here is to decide whether Canwood has met the burden of establishing the necessary "constitutional facts" upon which this ground of appeal can be assessed.

35. In its argument, Canwood asserts the normal or habitual, or core, activities of the business as 'a going concern' engage federal jurisdiction in two ways: first, Canwood asserts its core business is "international trade" in conjunction with CN, exporting logs sourced from First Nations' lands by rail and ships; second, Canwood says its core business operations are directly involved with the status and lands of First Nations.

The arguments made by Canwood invoke three areas of Section 91 of the *Constitution Act 1867*, Numbers 2, 10 and 24, which are as follows:

> **91**. It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,
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> 2. The Regulation of Trade and Commerce.
>
> 10. Navigation and Shipping.
>
> 24. Indians, and the Lands reserved for the Indians.

36. Two points should be made at this juncture. First, the assertions made by Canwood are not evidence. They are simply assertions which must have an evidentiary foundation grounded in "constitutional facts" if they are to have any effect on this issue. Second, the object of the analysis is the business of Canwood; not the business of CN Rail or CN Worldwide, unless the facts show that Canwood's business is "functionally integrated" into CN Rail or CN Worldwide and "subject to common management, control and direction": see *Actton Transport Ltd. v. Director of Employment Standards*, 2008 BCSC 1495 at paras 30 and 31 .

37. In this case, the Director has reached certain factual conclusions regarding the business of Canwood. They are set out above in the fairly extensive recitation of the facts taken from the corporate Determination. In particular, the corporate Determination describes Canwood as a company whose "business objective was to export lumber from British Columbia to foreign markets", focussing on mountain beetle killed wood. Canwood sought to advance this business objective by sourcing wood from First Nations' lands. To further their business objective, Canwood purchased an 80 acre property in Kersley, which it developed into a log sort yard. Canwood purchased industrial vehicles and equipment that were necessary for the log sorting operation and installed a government approved weigh scale. They entered into an arrangement with CN to have a rail spur constructed to the log sort yard. In their own documents, provided to the Director during the process and included in the section 112 record, a more complete description of the business objectives of Canwood is included in Exhibit 12:

> CANWOOD is now in its second year of operation. During the first year the objective of the company was fivefold:
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> 1. Developing a Wholesale Log Business (Log Sort Yard) and rail transportation center for logs.
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> 2. Harvesting and merchantable timber in the North through BC Government Timber Sales Auctions (Bidding on TSLs), buying logs from woodlot owners and other private owners and through joint ventures marketing alliances with First Nations who have very large Forest Licences.
>
> 3. Purchasing private property with large holdings of merchantable timber resources and other secondary revenue opportunities.

4. Milling and marketing a speciality value added niche product from raw logs for the house log industry in Canada and the United States.

5. Exporting speciality logs to China.

38. The document that lists these business objectives suggests that most of these objectives were advanced to some degree in Canwood's first year of business.

39. The Director and counsel for Bork have responded to the arguments made by Canwood on this question.

40. The Director submits Canwood has presented no evidence that it is a business engaged in the transportation and shipping of goods. Canwood has not established ownership in any operations involving the transportation of its products or that it is integrated into the operations of CN Rail in a way that would make Canwood an integral part of that business. The Director also submits that simply because Canwood engages the interests of or provides a service to aboriginal groups does not draw their business into federal jurisdiction.

41. Counsel for Bork argues Canwood's "core business", as a going concern, is not interprovincial or international trucking. He says Canwood is a marketing operation, sourcing, buying and selling logs. The fact their product may be shipped by CN Rail to international markets does not confer a federal status on their business. In respect of the argument that Canwood's business falls within federal jurisdiction because of its relationship with First Nations, counsel for Bork points out that the documents on which Canwood relies for its argument "represents a failed business arrangement/plan that was never carried out" and in any event only represents a proposal by Canwood to assist the Saik'uz First Nation with the development of their forest resources. He submits that a failed business arrangement such as that identified in the documents submitted by Canwood do not go to the "core of Indianness" as that term has been described in *NIL/TU,O Child and Family Services Society v. BCGEU*, 2008 BCCA 333, *Four B Manufacturing Ltd. v. United Garment Workers of America*, [1980] 1 SCR 1031 and *R. v. Dick*, [1985] 2 SCR 309.

42. In their final reply, Canwood says the Director "misunderstands the constitutional issue". Canwood repeats and elaborates on its initial argument – that it is, at its core, a federal undertaking because its business is international marketing, transportation and trade in a product whose primary source is logs harvested on Indian Lands.

43. In *Northern Telecom Limited v. Communications Workers of Canada et al.*, [1980] 1 S.C.R. 115 the Court summarized the constitutional principles applicable to a consideration of federal jurisdiction over labour and labour relations:

> 1. Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.
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> 2. By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject.
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> 3. Primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but only if it is demonstrated that federal authority over these matters is an integral element of such federal competence.

> 4. Thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one.
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> 5. The question whether an undertaking, service or business is a federal one depends on the nature of its operation.
>
> 6. In order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of "a going concern", without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity.

44. There is simply no evidence that any aspect of Canwood's business is federally regulated under the general power over "trade and commerce" in point 2 of the *Constitution Act 1867*. More particularly, the subject matter of this case is employment standards and there is no evidentiary basis for asserting the general federal power to regulate trade and commerce has been used to exercise control over the employment relationship between Bork and Canwood. A company whose business includes trading its products internationally does not, on that basis, fall within federal jurisdiction.

45. The Courts have long since decided that the general power of Parliament to legislate for the regulation of trade and commerce does not include the power to legislate over matters, such as property and civil rights in the province, which are specifically reserved to the legislative authority of the province: see *British Columbia Packers Ltd., and others v. Canada (Labour Relations Board) and others*, [1974] 2 F.C. 919 and cases cited therein. In this respect, and in the context of this argument, the words of Mr. Justice Beetz, at page 3, speaking for the majority in *Four B Manufacturing Ltd., supra,* are worth noting:

> In my view the established principles relevant to this issue can be summarized very briefly. With respect to labour relations, exclusive provincial legislation competence is the rule, exclusive federal competence is the exception. The exception comprises, in the main, labour relations in undertakings, services and businesses which, having regard to the functional test of the nature of their operations and their normal activities, can be characterized as federal undertakings, services or businesses."

46. If Canwood is to succeed on its constitutional jurisdictional argument, it is required to show that at its core it is a federal undertaking, either because it is engaged in shipping and navigation or because of its "Indiannes".

47. I find that Canwood has failed on both points.

48. There is no evidence that Canwood operates a trucking or shipping business. The evidence is that Canwood operates a log sort yard in Kersley, BC and uses CN Rail, and other trucking businesses, to transport its product. There is no evidence that Canwood is integral to the business of CN Rail, any other part of CN or to any other businesses it uses to transport its product. On the available facts, I reject the suggestion that there is a "special partnership relationship" with CN Rail and CN Worldwide that draws Canwood into federal jurisdiction. The evidence is there is a business relationship between Canwood and CN, but that business relationship does not allow a conclusion that Canwood is, at its core, carrying on a federally regulated enterprise. There is no evidence of any commonality of management, control or direction between Canwood and any other business, federally regulated or otherwise.

49. For much the same reasons, I have concluded the defining characteristic of Canwood's business is not its "Indianness". In addressing this aspect of Canwood's argument, I am troubled by what I perceive to be the failure of Canwood to provide a true picture of its ongoing activities. The evidence in the file is clear that the business of Canwood is not limited to a relationship with First Nations, but includes potential business relationships with other, non-aboriginal, persons. The material in the section 112 record names Richmond Plywood, Probyns Export, Ainsworth Lumber and Tolko Forest Products in this category and makes general reference to various private land owners and unidentified customers. Canwood's portrayal of its relationship with First Nations is not only premised on what the material in the file confirms was a failed attempt to establish a business relationship with Saik'uz First Nations, but is merely a snapshot of one element of their business objectives. It is apparent, when the broader picture of the business of Canwood is examined, the defining characteristic of its business is, as submitted by counsel for Bork and supported in the evidence, developing a wholesale log marketing operation, buying logs from several sources and selling those logs to several customers.

50. There is no evidentiary or legal basis supporting the constitutional jurisdictional arguments made by Canwood and they are rejected. This ground of appeal fails.

The Finding of Employee Status

51. Canwood says the Director erred by finding Bork was an employee of Canwood under the *Act* at the time of the alleged contravention. Canwood argues they had the legal right to alter Bork's status from full-time employee to part-time consultant for economic reasons. The inference is that the Director had no authority to intrude on that "right". Canwood denies the reason for changing Bork's status with the company was to avoid the payment of the bonus.

52. The Director submits this argument does not identify an error in law, but rather a disagreement with a finding of mixed fact and law, which is not open to Canwood to challenge.

53. Counsel for Bork echoes the position of the Director. He also submits that Canwood is, as a matter of law under the *Act*¸ wrong in asserting an employer is entitled to unilaterally alter the status of a person under the *Act* from full-time employee to part-time consultant for economic reasons. Counsel for Bork submits the conclusion of the Director on Bork's status under the *Act* is justified on application of the facts to the definition of employee in the *Act*.

54. It is partly in response to the submission of the Director on this matter that Canwood raises an additional ground of appeal alleging a failure by the Director to comply with principles of natural justice. I will deal with this matter later in the decision. Other elements of the reply by Canwood add nothing to the issues raised and commented on by the parties.

55. I agree that Canwood has failed to show any error of law in the Director's conclusion that Bork met the definition of employee under the *Act* after his lay off from Canwood in September 2007, and continued as an employee of Canwood until the spring of 2008. The issue is not, as argued by Canwood, what rights they had at common law *vis.* Bork's employment, but what effect the purported lay off in September 2007 had on Bork's status under the *Act* and, by necessary implication, on his right to claim entitlement to wages through the processes provided in the *Act*.

56. Employment status under the *Act* is not determined by the labels put on an individual by the employer, but by an analysis of the nature of the relationship between the putative employee and employer tested

against the provisions of the *Act* interpreted and applied consistently with the objectives and purposes of that legislation.

57. Counsel for Bork correctly points out that the Courts have strongly endorsed an approach to the interpretation and application of the *Act* that recognizes it is socially beneficial legislation that should be interpreted broadly and in a way that encourages compliance by employers and extends its protection to as many employees as possible. In the Determination, the Director found, as a matter of fact, that Bork performed the same work for Canwood after the purported lay off as he did before. Canwood has not addressed its arguments on this aspect of the appeal in the context of the provisions of the *Act* but on its perceived rights at common law and the incorrect assumption that those perceived rights trump the rights of employees provided by the legislature in the *Act*. Simply put, the Director found, on an application of the facts to provisions in the *Act*, that Bork did not lose his status as an employee for the purposes of the *Act* as a result of the purported lay off and his subsequent engagement as an "independent contractor" performing the same work as he had performed as an employee.

58. This ground of appeal is dismissed.

The "Controlling Mind" Issue

59. Canwood argues the Director erred in finding Bork did not have the role of "controlling mind" of the company. Canwood says the Director should have found Bork to be a "controlling mind" and as such excluded from the protections of the *Act*.

60. Both the Director and counsel for Bork say this argument challenges findings of fact made by the Director that Bork was not a "controlling mind" of Canwood. Counsel for Bork says there was ample evidence to support the conclusion of the Director and, as a finding of fact, there is no appeal and the Tribunal is without authority to consider this argument. He also submits "the error of law set up by Canwood" is a "straw man" and a misapplication of the Determination.

61. I accept this ground of appeal is grounded in a disagreement with findings of fact. Canwood has not shown these findings of fact amount an error of law and, based on the Tribunal's conclusion in the *Britco Structures Ltd.* case, no appeal is available.

62. This ground of appeal is dismissed.

Interpretation Error Issues

63. There are several alleged errors of interpretation raised in the appeal. The first relates to the comfort letter, the second relates to whether there were other conditions that applied to receipt of the bonus, the third relates to alleged "discretionary" aspects of the bonus and the fourth relates to the question of approval by the Board of Canwood and Mr. Matkin's authority to grant the bonus.

64. On the first interpretation issue, Canwood argues the Director erred in the interpretation of the comfort letter dated April 27, 2007. Canwood submits the Director, in effect, treated the letter as a binding contract when there was no evidence of any intention by the parties to do so. Canwood says, in any event, the Director misconstrued the letter by using it to decide the only condition to entitlement to the

bonus was the completion of the rail spur. The appeal submission on this point provides extensive argument on how the comfort ought to have been interpreted and treated by the Director.

65. The Director submits the argument made by Canwood on this point is too limited in its analysis; that the comfort was not found to be a binding contract, but was used to determine the agreement of the parties on the terms and conditions for payment of the bonus. The Director refers back to the reasons set out in the corporate Determination confirming Bork's entitlement to the bonus he claimed.

66. Counsel for Bork says elements of the submission made by Canwood on this point are misleading and inconsistent with the findings of fact made by the Director. Counsel points to the assertion by Canwood that the "undisputed purpose" of the comfort letter "was only to help Bork get credit from Carter Motors". He submits that Canwood is merely attempting to have the Tribunal re-weigh the facts and reach a different conclusion. He reiterates that the Tribunal has indicated questions of mixed fact and law are not open for review.

67. The question to which the comfort letter related was: "What are the agreed terms and conditions of Olaf Bork's Bonus?" In answering that question, the Director considered evidence presented by both parties. The Director noted there was no dispute that a bonus was discussed and was tied "primarily" to the completion of the rail spur. The contest between the parties was whether the bonus was tied only to the completion of the rail spur or whether it was more broadly dependent on other performance related conditions and, ultimately, the discretion of Canwood's Board. After assessing the respective positions of each party, the Director concluded the agreement was to pay the bonus on successful completion of the rail spur. This conclusion was not based on a finding that the comfort letter was a "contract", but on a consideration of all the evidence presented and an assessment of the relative credibility of the respective stories of the parties. There is no doubt the Director found the comfort letter a compelling piece of evidence, but in my view the Director was entitled to do that and committed no error of law in that respect. There is no indication in the corporate Determination that the Director found the letter "binding" and Canwood has misstated the effect of the Director's view of the comfort letter in that respect. If the Director had found the comfort letter to be a binding contract, logically it would have been unnecessary to have considered any other evidence or positions advanced by either party. That is not, however, how the Director approached this question. As the corporate Determination clearly demonstrates, the Director received other evidence, received submissions from the parties on the effect of that evidence on the question posed, weighed the evidence, considered the submissions and reached a conclusion. Canwood does not like the conclusion and their argument quite strongly expresses its disagreement with how the Director construed and weighed the comfort letter, but they have not shown there is any error of law on that point.

68. Canwood also says the Director erred in concluding there were no other conditions attached to the bonus. This aspect of the appeal has spawned some controversy, which has arisen from the following paragraphs of the corporate Determination at page R13:

> Given that Canwood has not presented any direct evidence that there were other terms and conditions attached to the bonus, I have not found many factors that may direct me towards a finding that the completion of the rail spur was the only condition attached to receiving the bonus. However, I do take note of the fact that when Mr. Bork requested a letter from Mr. Matkin, he inserts a question mark after referring to the word "amount". This does corroborate Mr. Matkin's claim that the bonus only ever existed as a potential benefit, with no secure terms, as it may indicate the amount of the bonus only ever existed in loose terms arrived at through informal discussions.

> Weighing the above, I find that the more credible version of events is that of Mr. Bork, and that there was an agreement between Mr. Matkin, acting on behalf of Canwood, and Mr. Bork, to pay Mr. Bork a bonus of $60,000 upon successful completion of the rail spur.

69. The argument developed by Canwood around these two paragraphs is that they are clearly contradictory. Canwood says the plain meaning of the first sentence of the first paragraph is that the Director did find a lot of factors that would suggest the completion of the rail spur was not the only condition and thus contradicts the second paragraph, which suggests the completion of the rail spur was the only term.

70. In response, the Director says there is an error in the first sentence caused by the omission of the word "not" between "the rail spur was" and "the only condition". The Director seeks to have the Tribunal correct this omission under section 123 of the *Act*. Canwood strongly objects and in response has raised an additional ground of appeal that contends the error which the Director says was made cannot be corrected under section 123 and that to seek such an amendment to the Determination is unreasonable, a breach of natural justice and fairness and an error of law.

71. The appeal on this point, and the ensuing argument about whether the inclusion of the word "not" in the position indicated by the Director creates an "illiterate" and grammatically troublesome sentence and is not simply a "technical error", is entirely unnecessary and inconsistent with the purposes of the *Act*, which directs disputes under the *Act* be dealt with fairly and efficiently. It makes no sense, in the face of the concession made by the Director that an error was made by the omission of the word "not", to address the argument as though no error was made. There is no benefit to the process, as the best Canwood could achieve, even if I accepted this omission gave rise to a reviewable error, would be to have the Tribunal refer the matter referred back to the Director under section 115 to address the apparent contradiction created by the omission and that has already been done.

72. I do not need to use section 123 of the *Act* to accept there is an error in the disputed sentence. I can accept the Director's concession that an error has been made. Canwood has provided no valid reason why I should do otherwise. This is not an unreasonable approach. Canwood cannot complain that there has been a breach of natural justice or procedural fairness simply because an error has been corrected.

73. In any event, I agree with counsel for Bork that the corporate Determination should be "fairly and reasonably read". In that sense, I am not confined to the words on which Canwood's arguments are based, as Canwood would require. I am not only entitled, but feel compelled, to consider Canwood's argument against all of the evidence provided, the analysis of that evidence by the Director and the conclusions reached in the corporate Determination. On that approach, there are several areas of the corporate Determination that reinforce the existence of an error and point to the correct reading of the words relied on by Canwood. The analysis on this point in the corporate Determination contains the following references on pages R11 to R13:

> The problem is that there is no direct evidence the bonus was discretionary and contained any other conditions which Mr. Bork would have to complete in order to receive this bonus . . .
>
> Canwood submitted a lengthy list of conditions which they allege were required . . . I will address each of these in turn.

74. The Director addressed the arguments by Canwood that the financial success of the company was an explicit condition of the bonus; that completion of the CN Rail negotiation in accordance with projections was necessary to the bonus; and that continued employment was also necessary for receiving the bonus.

> . . . I do not accept that this language shows an acceptance that payment of the bonus was based on the financial performance of Canwood.
>
> . . . I have no evidence before me that this report was tied to the bonus in any way.
>
> Canwood also argued that completing the negotiation with CN Rail and building the rail spur in a timely matter [sic] was relevant to the bonus, as was negotiating favourable terms. Again, there is no evidence before me that would definitively lead me to this conclusion.
>
> . . . Canwood has not presented any direct evidence that there were other terms and conditions attached to the bonus, . . .
>
> . . . I find the more credible version of events is that of Mr. Bork, and that there was an agreement between Mr. Matkin, acting on behalf of Canwood, and Mr. Bork, to pay Mr. Bork a bonus of $60,000 upon successful completion of the rail spur.
>
> I am not convinced Mr. Bork was not an employee at the time the CN Rail Spur was approved for use and I reject Canwood's argument . . .

75. On such a reading, I am satisfied even before reaching the contested sentence that the Director found there was no evidence indicating completion of the rail spur was not the only condition. The contested sentence is a summary of the preceding findings, which are only accurately summarized by the insertion of the word the Director says was unintentionally omitted. Canwood objects to the resulting "double negative". That may be so, but the inclusion of a sentence containing a "double negative" – if that is in fact the result here – does not amount to an error in law.

76. A general difficulty for Canwood with their argument is how the Tribunal, in the face of the above analysis and findings leading up to the contested sentence, can conclude the Director must have decided there were other terms and conditions attached to the bonus. Such a conclusion would be absurd and likely an error of law as there does not appear to be any evidence to support it.

77. For the above reasons, I do not accept this argument demonstrates an error of law was made on this point.

78. Canwood also argues that the Director erred in law by not including the financial ability of the company as an "understood" term of the agreement to pay the bonus. Specifically, Canwood asserts "every performance bonus offered by any company is understood" to be conditional on the "ability of the company to pay". The argument being made by Canwood in this appeal appears to be a new argument that was not presented during the complaint process. The argument made to the Director during the complaint process was that the financial condition of the company was "a key explicit condition of the bonus". That argument was addressed in the Determination. The Director found no evidence supporting such a condition.

79. As Canwood has raised this argument as an error in law, their position in this appeal must be taken to be that the inclusion of this "understood" condition is grounded in some operative legal principle. The assertion upon which this argument is based is a broad and general statement made without any supporting authority. More particularly, Canwood has not shown the inclusion of such a condition into an agreement to pay a bonus is required at law, thereby making its exclusion an error of law.

80. It follows that Canwood has not shown the Director committed any error in law in rejecting Canwood's position that the bonus was conditional on the "financial performance" of the company.

81. Canwood next argues the Director erred in law in finding the payment of the bonus was not discretionary. The actual submission of Canwood on this point commences as follows:

> Assuming no conditions except building a rail spur are relevant, which is not admitted but denied, that one condition must be interpreted based on the dynamic and changing employment relationship. The law requires a common sense [sic] to the interpretation of this condition to justify awarding the bonus . . .

82. This argument is much like the one addressed above, as it asserts the Director erred by not "reading into" the agreement to pay the bonus a discretion not to pay the bonus based on changing circumstances, including, it would appear, the circumstances relating to the completion of the rail spur, the financial circumstances of the company and the underlying reasons for the decision of the company to terminate Bork's employment. In other words, Canwood contends the Director erred in not including all of those conditions to the bonus which the Director found no evidentiary basis for including.

83. In response, the Director says there was no failure to consider the "evolution" of the relationship between Canwood and Bork, but the change in circumstances did not alter the Director's perception of the agreement of Bork's entitlement to the bonus.

84. Counsel for Bork says there is no legal principle requiring the interpretation of the agreement to pay the bonus to be based on the "dynamic and changing employment relationship" or "common sense". He says the cases relied on by Canwood have no bearing on the interpretation of the bonus agreement.

85. In my view, once again Canwood has not shown that, as a matter of law, a condition such as the one asserted here must be read into an agreement to pay a bonus. I do not find the court decisions referred to by Canwood on this point to be particularly helpful as they consider employment contracts which are considerably different in their terms than the one under consideration here. Nor does the statement of the law taken from *Wilson v. Richmond Savings Credit Union*, 2000 BCSC 1400 and relied on by Canwood in their argument, assist them on this point. The initial point made in that statement of law is that:

> . . . in all contract cases, the court must start with the proposition that contract law exists to protect the reasonable expectations of the parties.

86. In this case, the Director concluded that the expectation of Bork was that he would be paid his bonus on completion of the rail spur and that expectation was met by Mr. Matkin on behalf of Canwood. The Determination, at page R12, expresses that expectation in the following terms:

> The undisputed evidence is that Mr. Bork sent Mr. Matkin and e-mail with the subject line "contract". In it he asks Mr. Matkin to work out a basic contract. He also states he doesn't care what Mr. Matkin writes in regards to his commission, but that he is going to hold him to the bonus for the spur. Mr. Matkin's reply is a letter which states that he is entitled to a bonus of $60,000 on successful completion of the CN Rail spur at the Kersley Sort Yard. Mr. Matkin was forewarned that Canwood would be held to what appeared on the paper, . . .

87. The Director was also satisfied that Mr. Matkin, acting on behalf of Canwood, understood the bonus was something Canwood would have to pay (page R13).

88. This argument is not accepted.

89. On the final interpretation issue raised in the appeal, Canwood argues the Director erred in law in concluding Mr. Matkin had the authority to grant the bonus. Canwood says that conclusion misinterprets the essentially discretionary nature of a performance bonus. One matter should be clarified. There is nothing in the corporate Determination that adopts the characterization of the bonus claimed as a "performance" bonus. The Director found the bonus satisfied the definition of "wages" under the *Act*, as "*money that is paid or payable by an employer as an incentive and relates to hours of work, production or efficiency*". There is nothing discretionary about the payment of wages once they are earned. As the Tribunal has stated and restated on many occasions, the *Act* says wages are earned when work is performed and are payable when they are earned: see for example *Fabrisol Holdings Ltd. operating as Ragfinder*, BC EST #D376/96. The central question being considered by the Director was whether the wages claimed were "earned". The Director found the wages, in the form of the bonus, were earned on successful completion of the rail spur. The Director also found, on the facts, that Mr. Matkin had the authority to grant the bonus and that formal board approval was not a condition to earning the bonus.

90. Canwood has not shown that as a matter of law, a bonus such as the one claimed by Bork requires the formal approval by the employer's Board, or as suggested, confirmation and support from the employer's CEO. The question decided by the Director is not a question of law at all, but a question of fact. It is, as suggested by the Director, a question about what the parties agreed to.

91. In sum, Canwood has not shown the Director committed any error in law in deciding, or as Canwood has characterized it, "interpreting", the terms and conditions of the bonus agreement.

92. Canwood has not shown the Director committed any error of law in making the corporate Determination and this ground of appeal is dismissed.

93. Canwood has added additional grounds to the appeal in its February 9, 2009 reply. One of the grounds, relating to the omission of the word "not" in the sentence on page R13, has already been addressed. The other alleges a breach of natural justice based on the submissions made by the Director in response to the appeal. The issue is stated by Canwood as follows:

> Is the 5 page advocacy response of Mr. Barker [the Director] to the Appeal Tribunal defending his Determination allowed by law or is it an unfair and unreasonable procedure and a denial of natural justice?

94. The arguments presented by Canwood in response to the question they have posed are, with one exception, of general application. Canwood says the statute does not provide the Director with a right to respond and defend a Determination and the submissions made by the Director in this appeal present the appearance of bias. Canwood says the resulting submissions have expanded upon and changed the corporate Determination, although with one notable exception, Canwood has not identified how the corporate Determination has expanded or what changes to it have resulted from the Director's submissions.

95. The one exception is the correction of the error which the Director has identified on page R13. I don't propose to repeat what has already been decided in respect of that matter. As for the balance of this additional ground, I need do no more than refer to the Tribunal's decision in *British Columbia Securities Commission*, BC EST #RD121/07 (Judicial Review dismissed, *British Columbia Securities Commission v. Burke*, 2008 BCSC 1244), where the Tribunal substantially confirmed the principles originally

developed in *BWI Business World*, BC EST #D050/96 ("*BWI Business World*") that the *Act* contemplates the Director having a role in the appeal and reconsideration processes in the *Act* and, as a matter of policy grounded in the purposes and objectives of the *Act*, is allowed to make complete submissions on all aspects of an appeal, including natural justice: see paragraphs 22 – 28.

96. While the Tribunal has continued to recognize the Director's role is not to be the statutory agent or advocate of the employee and the Director must appreciate that there can be a fine line between explaining the basis or analytical process for a decision and advocating on behalf of one of the parties, there is nothing in the submissions made by Canwood on this ground that would allow me to conclude the Director has gone beyond his accepted role.

97. There is no basis for this ground of appeal and it is dismissed.

98. Mr. Matkin, on his own behalf and, apparently, on behalf of the other directors and officers, has appealed the director/officer Determination. There is some question about whether the form of the appeal is sufficient to include all of the directors and officers of Canwood, but in the interests of efficiency I will accept Mr. Matkin has the authority to file the appeal for all director and officers and has done so. In this appeal, Mr. Matkin must show that the calculation by the Director of the amount of the director/officer liability was either based on wrong information, was unreasonable or absurd or was manifestly unfair from an objective standard: see *Mykonos Taverna operating as Achillion Restaurant*, BC EST#D576/98 and *Shelley Fitzpatrick operating as Docker's Pub and Grill*, BC EST #D511/98.

99. Section 96(1) of the *Act* provides:

> *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.*

100. Mr. Matkin argues the Director erred by basing the personal liability of the director/officers on a wage of $6500.00 a month. He says Canwood ceased paying that wage on September 18, 2007 and then paid Bork $1000.00 a month as a consultant for the remaining five months of his relationship with Canwood. While not expressly saying so, the implication of the submission is that the director/officer liability should be based on a monthly wage of $1000.00.

101. In response, the Director notes that Bork was found to be an employee under the *Act* throughout his relationship with Canwood; he was never considered a "consultant". The Director says that while calculating two months' wages for Bork did present some difficulties, it was decided to use the salary amount the parties had agreed to during the period when there is no dispute that he was an employee, which was $6500.00 a month. The Director says that neither the $1000.00 amount, which did not represent a wage, nor the $60,000.00 bonus amount, were realistic figures to use. The Director also points out there was no record of hours worked by Bork.

102. In response, Mr. Matkin says the arrangement put in place after September 2007 should be considered in the calculation of unpaid wages under section 96 because the rail spur was not completed until October 2007, according to Bork, or not until January 2008, according to CN. Some of the factual assertions made in that reply are not in evidence, but I do not need to consider that as I don't find the point particularly compelling. Mr. Matkin also says it is the practice to spread the payment of a bonus such as the one payable to Bork over a year or two, but there is no evidentiary support for that statement either.

103. None of the submissions made on this appeal persuade me to conclude the calculations of the Director on the amount of the director/officer liability are wrong and require recalculating. The submissions made by Mr. Matkin do little more than confirm the comment made by the Director, that calculating two months' wages posed some difficulty. It is fair to say the calculation could have been made in a way that lessened the personal liability of the directors/officers, just as it could have been made in a way that substantially increased their liability. By way of example, if the Director had added all wages earned by Bork during his employment, salary, commission and bonus, and averaged those over his full period of employment, 29 months, the evidence suggests the monthly wage would be in the range of $7000. If the Director had taken the wages earned by Bork in the last six months of his employment, adopted Mr. Matkin's view that his wage for the last five months was $1000 a month, but recognized that the bonus was wages earned in that period, the average monthly wage would be in the range of $12,000 a month. On the other hand, if the bonus was not considered at all, then, of course the calculation of monthly wages would be quite a bit less, depending on what other wage amounts are used and over what period.

104. In the final analysis, however, the calculation of the wages owed is a matter that is uniquely within the realm of the Director. In this case, the wage calculations made by the Director are not shown to be unreasonable or absurd. Nor do they appear to manifestly unfair from an objective standard. They are based on evidence that was before the Director and are justifiable on that evidence.

105. Mr. Matkin has not met the burden imposed and the appeal of the director/officer Determinations is dismissed.

106. There is one final matter to address. Very late in the appeal process, Canwood filed communications with the Tribunal alleging the company had only just discovered that Bork had placed himself in a conflict of interest by secretly working for another company in the same business as Canwood. The communication stated that had the company been aware of this circumstance, Bork would have been terminated immediately.

107. The Tribunal has not sought any response on these communications as they are completely irrelevant to the appeal being considered here and totally misguided.

108. The issues in these appeals are the claim by Bork for wages, in the form of a bonus, that he says (and the Director accepted) were earned and payable to him by Canwood, and the calculation of director/officer liability under section 96 of the *Act*. There is no claim for length of service compensation, which may invoke an argument about whether the claimant has lost that statutory benefit by giving cause for dismissal[2]. The communications suggest the effect of this alleged conflict of interest is to deny the Director jurisdiction over Bork's claim. That suggestion is preposterous. Even if the allegation has any substance, that circumstance does not operate to disentitle individuals, for whose benefit the *Act* exists, from enforcing their rights under it. The Tribunal does not need any submissions from the parties to reach that conclusion.

[2] Even in the context of a claim for length of service compensation, the Tribunal has said after acquired knowledge of circumstances that might have justified the termination of an employee cannot be relied on to deny that employee's claim under section 63 of the *Act*: see *Wendy Benoit and Ed Benoit operating as Academy of Learning*, BC EST #138/00 and *Williams Lake Cedar Products Ltd.*, BC EST #415/01 (Reconsideration denied, BC EST #RD073/02).

109. For all of the above reasons, the appeals are dismissed.

110. In light of the decision reached on the appeal, it is unnecessary to consider the application to suspend the effect of the Determination pending appeal.

ORDER

111. Pursuant to Section 115, I order the corporate Determination dated November 12, 2008 be confirmed in the amount of $65,100.24 together with any interest that has accrued under Section 88 of the *Act* and the director/officer Determinations dated December 12, 2008 are confirmed in the amount of $13,520.00.

David B. Stevenson
Member
Employment Standards Tribunal