

An application for suspension

- by -

Brandt Tractor Ltd.
("Brandt Tractor")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

Pursuant to section 113 of the
Employment Standards Act R.S.B.C. 1996, C. 113 (as amended)

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2013A/16

DATE OF DECISION: April 10, 2013

DECISION

SUBMISSIONS

M. Jean Torrens

counsel for Brandt Tractor Ltd.

Tyler Siegmann

on behalf of the Director of Employment Standards

INTRODUCTION

1. This is an application made under section 113 of the *Employment Standards Act* (the “*Act*”) to suspend a Determination pending the adjudication of an appeal. On January 31, 2013, and following a 3-day complaint hearing, a delegate of the Director of Employment Standards (the “delegate”) issued a Determination against Brandt Tractor Ltd. (“Brandt Tractor”) pursuant to which it was ordered to pay its former employee, Shannon L. Claypool (“Claypool”), \$9,039.91 on account of unpaid vacation pay and section 88 interest (the “Determination”). Further, and also by way of the Determination, the delegate levied two separate \$500 monetary penalties against Brandt Tractor based on its contravention of section 58 of the *Act* (failure to pay vacation pay) and section 46 of the *Employment Standards Regulation* (the “*Regulation*”) (failure to produce payroll records). Thus, the total amount payable under the Determination is \$10,039.91.
2. Mr. Shannon advanced claims for unpaid commissions and for vacation pay but only the latter claim was successful. Brandt Tractor now appeals the Determination on the grounds that the delegate erred in law and failed to observe the principles of natural justice in making the Determination (subsections 112(1)(a) and (b)). At this juncture, it would not be appropriate to engage in a detailed consideration of the merits of the appeal.

THE SUSPENSION APPLICATION

3. Brandt Tractor requests that the Determination be suspended “until its appeal is heard by the Tribunal and a decision rendered”. Brand Tractor asserts that it “has already paid to the Director, pursuant to the Determination, the amount of \$6,668.93 (which represents the full amount payable of \$10,039.91, less statutory deductions)”.
4. The delegate, in his submission dated March 25, 2013, confirms that “the total amount to be paid under the Determination, including wages and penalties” has been deposited with the Director and that the funds will be held in the Director’s trust account “until the appeal is heard by the Employment Standards Tribunal and a decision is rendered”.
5. Subsection 113(2) of the *Act* states that the Tribunal may suspend a determination provided the applicant deposits either the total amount of the Determination or “a smaller amount that the tribunal considers adequate in the circumstances of the appeal”.
6. In this instance, Brandt has not deposited the entire amount of the Determination but it has deposited what might be termed the “net payable amount” taking into account required statutory deductions and remittances. I consider that latter sum to be adequate and, apparently, so does the delegate. Although invited to do so, Mr. Claypool did not file a submission regarding the suspension request and so I can only assume that he also considers the amount currently on deposit with the Director to be adequate.

ORDER

7. Pursuant to subsection 113(2)(b) of the *Act*, the Determination is suspended pending the final adjudication of this appeal by the Tribunal.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal