



An appeal

- by -

Bradly Gene Jacobson operating The Southin Farms Ltd.  
(“Southin Farms”)

- 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:** C. L. Roberts

**FILE No.:** 2000/830

**DATE OF DECISION:** February 6, 2001

## DECISION

This is a decision based on written submissions by Jens-Hugo Jacobsen on behalf of The Southin Farms Ltd. and Jindy Manj for the Director of Employment Standards.

### OVERVIEW

This is an appeal by Bradly Gene Jacobson operating The Southin Farms Ltd. ("Southin Farms"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued November 27, 2000. The Director found that Southin Farms contravened Section 17 of the Act in failing to pay Derek Findo ("Findo") and Janet Faulkner ("Faulkner") wages, and Ordered that it pay \$814.87 in wages and interest to the Director on behalf of Findo and Faulkner.

### ISSUE TO BE DECIDED

Southin Farm's grounds of appeal neither allege nor disclose any errors of law in the Determination. It did allege an error of fact, which was conceded by the Director. Nevertheless, that factual error, which was Faulkner's job title, has no effect on the Determination.

The question for the Tribunal then, is whether the notice of appeal discloses any justiciable issue.

### FACTS

The facts, as set out by the Director's delegate, and as corrected by delegate, are that Faulkner and Findo were hired as pruners, in July 2000, and February 2000, respectively. Faulkner worked for approximately one month, Findo for approximately four months. They complained that they had not been paid wages.

During the investigation, Southin Farms conceded that wages were owing to Faulkner and Findo, and provided the delegate with paycheque statements indicating wages owing. Southin indicated that it was willing to pay the wages, but was unable to, as it did not have the necessary funds.

The delegate found Southin Farms in contravention of section 17 of the Act, and awarded Findo wages owing of \$588.74 plus interest, and Faulkner \$203.79 plus interest.

## **ARGUMENT**

In its letter of appeal, Southin Farms does not dispute owing the funds, nor does it allege an error in the Determination, aside from claim that Faulkner's job description was incorrect.

It contends, however, that both employees have failed to return a completed TD1, and that neither have requested a Record of Employment. Southin Farms states that it is unable to comply with either section 27 or 28 of the *Act*.

Southin Farms seeks an Order denying the interest charged on the wages owing, and sending the Determination back to the delegate to request the employees to complete a TD1.

## **ANALYSIS**

The burden of establishing that the Determination is incorrect rests with an Appellant. The Appellant does not claim an error, but seeks, as a remedy, to have the delegate require the former employees to complete and deliver certain documentation.

I find there are no grounds for this appeal, as it appears that it is simply an attempt to extend the time for Southin Farms to pay wages it already acknowledged owing, but claimed it could not for financial reasons.

As Southin Farms does not deny the facts or allege an error of law, I dismiss the appeal under Section 114(1) of the *Act* as a frivolous appeal.

## **ORDER**

I Order, pursuant to Section 115 of the Act, that the Determination, dated November 27, 2000 be confirmed, together with whatever interest has accrued since the date of issuance.

***C. L. Roberts***

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**C. L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**