

An appeal

- by -

Above and Beyond Technologies Inc.
("ABT")

- 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: Sheila McDonald

FILE No.: 2000/760

DATE OF DECISION: February 7, 2001

DECISION

OVERVIEW

This is an appeal by Above and Beyond Technologies Inc (“ABT”) regarding the Determination by Ms. Luttmer, Delegate of the Director of Employment Standards dated October 12, 2000.

The Determination found that ABT had contravened Parts 3 and 7 and Sections 16, 18 and 58 of the *Employment Standards Act* (the “Act”). The Determination found that Mr. Knudson was an employee of ABT and ordered ABT to pay Mr. Robert Knudson, Office Manager wages and annual vacation pay in the amount of \$2000 in wages, \$270.96 in annual vacation pay and interest of \$50.16 to a total of \$2321.12.

ISSUE

There is one issue to be decided. Whether ABT was Mr. Knudson’s employer.

THE FACTS AND ANALYSIS

Above and Beyond Technologies (“ABT”) agreed to merge their business operations with Web Strategists (“WS”) in the spring of 2000. WS relocated their physical operations to ABT’s premises at 2101 Government Street, Victoria BC. ABT provided the facility costs, legal, and accounting services in exchange for WS providing a sales staff member and an Office Manager, Mr. Knudson. Due to financial reasons on the part of WS, ABT and WS did not proceed with a total corporate merger. WS continued to occupy space at the premises of ABT and the companies attempted to work together to sell and build client websites.

Mr. Knudson commenced employment with ABT/WS as an Office Manager on March 27, 2000 and was terminated on June 26, 2000.

Ms. Luttmer served ABT with two Demands for payroll records however, the records were not provided. ABT claimed that WS was Mr. Knudson’s employer. ABT did advise Ms. Luttmer that they paid wages to Mr. Knudson but they claimed that the cheques were just loans to WS. They further claimed that they expected the loans would be repaid should WS’s financial position improve.

WS claims they had nothing to do with the matter.

Mr. Knudson claims that he became an employee of ABT at the time of the merger. He claims that he was paid by ABT, answered the phone as ABT, had an ABT e-mail address and attended several meetings with various clients of ABT, as Office Manger of ABT.

He provided copies of wage statements with ABT as the payee. Ms. Luttmer found that Mr. Knudson was an employee of ABT and further that ABT owed him regular wages and annual vacation pay.

The pay stubs provided by Mr. Knudson were received from ABT. There is nothing in the pay stub details to indicate that it was a loan to WS.

Mr. Knudson appears on ABT's list of Salaries and Titles as ABT's Office Manager. Mr. Alan Pasemko of ABT provided Mr. Knudson with a letter of reference on June 26th indicating that he had been ABT's Office Manager.

"Employer" is defined in section 1 of the *Act* as follows:

"employer" includes a person

- (a) who has or had control or direction of an employee, or*
- (b) who is or was responsible, directly or indirectly, for the employment of an employee.*

"Employee" is also defined in section 1 and includes:

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,*
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee.*
- (c) a person being trained by an employer for the employee's business.*
- (d) a person on leave from an employer, and*
- (e) a person who has the right of recall.*

The appeal by ABT claims that Mr. Bill Day of WS hired Mr. Knudson through a government wage incentive program. This is irrelevant in this matter.

It is clear from the pay stubs provided by Mr. Knudson that ABT was paying him wages. ABT claims that the wages paid to Mr. Knudson were an advance to Mr. Day of WS. There is no evidence to support this claim.

Further in a letter of reference dated June 26th given to Mr. Knudson Mr. Pasemko states "while executing his duties as Office Manager, Robert took on the role of project coordinator for our Community assistance initiatives- Food Exchange."

Based on the evidence provided it is clear that Mr. Knudson was performing work for ABT as their Office Manager.

I find that ABT was his employer.

ORDER

Pursuant to Section 115 of the *Act* I order that the determination be confirmed.

SHEILA MCDONALD

**Sheila McDonald
Adjudicator
Employment Standards Tribunal**