

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

- by -

Rocky Mountain Outfitter Ltd.  
(" RMO ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE No:** 1999/701

**DATE OF HEARING:** January 31, 2000

**DATE OF DECISION:** February 4, 2000

**DECISION**

**APPEARANCES:**

Karl Prinz	on behalf of Rocky Mountain Outfitter Ltd. (“RMO”)
Warren Riding	on behalf of Rocky Mountain Outfitter Ltd. (“RMO”)
Kosta Thanos	on behalf of Rocky Mountain Outfitter Ltd. (“RMO”)
Trevor McQueen	on his own behalf
Ross McQueen	on behalf of Trevor McQueen
Debra Burns	on behalf of Trevor McQueen

**OVERVIEW**

This is an appeal by Rocky Mountain Outfitter Ltd. (“RMO”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated October 22, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). RMO alleges that the delegate of the Director erred in the Determination by concluding that Trevor McQueen was and employee and owed wages in the amount of \$1,802.58.

**PRELIMINARY MATTER**

Counsel for RMO in their submission which accompanied the appeal and Karl Prinz (“Prinz”) at the hearing argue that the Determination does not provide any written reasons for concluding that McQueen was an employee.

**ISSUE**

The issue to be decided in this appeal is whether the Determination was issued pursuant to the requirements of the *Act*.

**FACTS**

The Determination issued October 22, 1999 concluded that McQueen was an employee and owed wages. The delegate of the Director states in the Determination “*The complainant does not meet the test of an independent contractor as outlined Exhibit 2*”. There was no Exhibit 2 attached to the Determination.

RMO and Prinz argue that without written reasons for the conclusion reached that McQueen was not an independent contractor, the appellant is denied to opportunity to prepare a proper case. It

is further argued that the conclusion reached that McQueen was an employee then led to the establishment of a liability against RMO. It is finally argued that the issue of independent contractor or employee is central to the case against RMO and without written reasons outlining why the delegate of the Director reached that conclusion, the very basis of the Determination is in question.

## ANALYSIS

The burden of establishing that the delegate of the Director erred in the Determination rests with the appellant, in this case, RMO.

The requirement which sets forth the necessary components of a Determination are found in Section 81 of the *Act* which provides:

*Section 81, Notifying others of determination*

81. (1) *On making a determination under this Act, the director must serve any person named in the determination with a copy of the determination that includes the following:*

- (a) *the reasons for the determination;*
- (b) *if an employer or other person is required by the determination to pay wages, compensation, interest, a penalty or another amount, the amount to be paid and how it was calculated;*
- (c) *if a penalty is imposed, the nature of the contravention and the date by which the penalty must be paid;*
- (d) *the time limit and process for appealing the determination to the tribunal.*

(2) *On being served with a determination requiring the employer to limit the hours of work of employees, an employer must display a copy of the determination in each workplace in locations where the determination can be read by any affected employees.*

When I read this Determination I am unable to find any reasons which explain why the delegate of the Director reached the conclusion that McQueen was an employee and not an independent contractor. Furthermore, the principles of natural justice also speak in favour of there being clearly set out reasons within the Determination.

In my view, it is not adequate and does not comply with the requirements of Section 81 (1) (a) to simply state: *The complainant does not meet the test of an independent contractor as outlined Exhibit 2*” and then not attaching Exhibit 2 to the Determination.

Given that in this Determination, the conclusion that McQueen was an employee directly leads to the establishment of a liability on RMO, the Determination must contain reasons which explain why the delegate of the Director has reached the conclusion which forms the very basis of the Determination.

For all of these reasons, I conclude that this Determination should be referred back to the Director for further investigation.

I note that this matter concerns a period of work performed in August - September 1998 therefore, in order that further delay be minimized, I would also direct that this matter be pursued by the Director in an expeditious manner.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated October 22, 1999 be referred back to the Director for further investigation and that such investigation be pursued in an expeditious manner.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**