

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 -

Catherine L. King: Daniel E. King Directors/Officers of
Jasea Holdings Inc.
("Jasea")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	David Stevenson
FILE NO.:	97/590
DATE OF HEARING:	January 21, 1998
DATE OF DECISION:	February 19, 1998

DECISION

APPEARANCES

for the Appellants:	Daniel E. King Catherine L. King
for the individuals:	Darlene Demone Tracy Hellmig Nancy Hobson (Mingaud) George Pierce Heather Schamerhorn

OVERVIEW

This is an appeal filed pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Catherine L. King and Daniel E. King, Directors/Officers of Jasea Holdings Inc. (“Jasea”) of a Determination of a delegate of the Director of Employment Standards (the “Director”) dated July 11, 1997. That Determination concluded Jasea owed an amount of \$17,777.05 in respect of the employment of approximately twenty-eight employees. Jasea says the Determination is wrong as it applied to fourteen of those employees. Jasea takes a number of different positions in this appeal: in respect of some of the fourteen, Jasea says they were paid the wages, including statutory holiday pay which the Director found to be owing; for others, Jasea says their claims are out of time; for another, Jasea says the individual was never an employee of Jasea; for another Jasea says the person had quit employment and was not entitled to the statutory holiday for which he was given credit; and for another, Jasea says the individual was a “manager” and not entitled to overtime under the *Act*.

ISSUE TO BE DECIDED

The issue is whether Jasea has established, on a balance of probabilities, that the Determination is wrong.

FACTS

Jasea is in bankruptcy. The investigation resulting in the Determination was triggered by complaints made by a number of employees that they had been terminated without notice or length of service compensation and there were unpaid wages, including statutory holiday pay, owing as of the date of termination. In the circumstances, Section 80 of the *Act* allowed the delegate to review a period of 24 months prior to the date of the

complaints or notice to Jasea of the investigation. On July 11, 1997 a Determination was made. On August 5, 1997, the Tribunal received an appeal from Jasea. The appeal enclosed a covering letter, addressed to the delegate, which stated, in part:

The proof of the appeals enclosed are not in our possession. All of our records are held with our Trustee's [sic] (Manning Jamieson Ltd.). Some of our employee Schedules are being held by you.

The letter was dated July 31, 1997.

On or about December 10, 1997, Jasea received notice of hearing for their appeal, setting the date of hearing as January 21, 1998. On January 12, 1998, Jasea notified the Tribunal by facsimile it was having difficulty acquiring the records of Jasea, which at the time were in the hands of the Trustee in Bankruptcy, Manning Jamieson Ltd. They asked the Tribunal to postpone the hearing. The facsimile communication was treated by the Tribunal as an application for an adjournment of the appeal and Jasea was notified the hearing would commence as scheduled and the application could be renewed at the hearing as a preliminary matter.

At the commencement of the hearing, Jasea made the application for adjournment. They provided a copy of the letter sent to the Trustee and a copy of their reply, which states:

In reply to your fax of January 5, 1998, and further to our telephone conversations, we cannot release all of the records of Jasea Holdings Inc. as you requested unless you obtain a court order. We will, however, provide copies, at your cost for time and copy charges, of documentation, if you advise which documents you require copies of.

After some consideration, the application for adjournment was denied. The following reasons were given: first, the request for an adjournment related to concerns that arose only in eight of the fourteen appeals, in which the issue was whether the individuals had been paid for hours worked on specific days or for specific statutory holidays; second, Jasea had known since July 31, 1997 that some of the information required to support their appeals was in the hands of the Trustee, but they had done nothing to either see the records containing that information or to obtain that information; third, no attempt was made to bring the concern to the Tribunal until more than one month had passed since notification of the hearing date, with the only attempt made to acquire the required information being a facsimile to the Trustee on January 5, 1998, fourth, even upon being advised by the Trustee that copies of the documents could be made available, no attempt was made to acquire the information even though the information needed was not extensive and was easily identifiable by individual and by date or period; fifth, some of the information Jasea said it required could have been obtained from another source, the payroll company used by Jasea, but no attempt was made to do this and no explanation for this failure was advanced; and sixth, the adjournment sought was for an indefinite period of time, until Jasea had "received" the records from the Trustee.

Following the ruling, Jasea was asked to present its case. They declined to do so, even in respect of those parts of the appeal involving individuals for whom no records were required. Jasea was advised of the probable consequences of their failure to present their appeal, indicated they understood and left the hearing.

ANALYSIS

As a general rule, the Tribunal will be very reluctant to grant adjournments to any party, even though there may be no objection raised, or even consent given, by another party or parties. The Tribunal views the essence of its responsibility under the *Act* is to provide an accessible, efficient, expeditious and final process for the resolution of disputes arising under the *Act* over which it has jurisdiction. As any administrative tribunal, the Tribunal is sensitive to ensure a person involved in the process is not denied a fair hearing, but absent that concern, applications for adjournment will rarely be successful.

There is no issue of fair hearing present in this case. It is not the Tribunal's responsibility to ensure an appellant has adequately assembled the evidence necessary to their case. Jasea had ample time and opportunity to acquire the information it needed to pursue its appeal. There was no adequate reason given to grant the adjournment sought.

The burden in an appeal is on the person bringing it. The nature of that burden is to persuade the Tribunal, on a balance of probabilities, that the Determination is wrong in some material respect and ought to be varied or canceled. Where the appeal is based upon a disagreement with conclusions of fact, the presence of the appellant, in this case Jasea, to demonstrate the errors in the Determination is essential. All of the appeals raised some dispute with the factual conclusions reached by the delegate. Their refusal to participate in the hearing after the application for an adjournment was denied is fatal to their appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated July 11, 1997 be confirmed in the amount of \$17,777.05 together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

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David Stevenson
Adjudicator
Employment Standards Tribunal