

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Michael P.S. Spearing, Director / Officer
Darlene Mortell, Director / Officer
Eric Richard Mortell, Director / Officer
Melvin N. Zajac, Director / Officer
Licefa International Inc.
(" the appellants ")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 96/127

DATE OF DECISION: May 3, 2001

DECISION

OVERVIEW

This is an appeal by the appellants pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against Determinations No. CDET 000964, DDET 000099, DDET 000100, DDET 000101, DDET 000102 issued by the Director of Employment Standards (“Director”) on February 9, 1996. In this appeal the appellants claim that the complainant David James Milligan (“Milligan”) was not an employee of the corporate entity, presently known as Licefa International Inc. The appellants further argue that in any event, Michael P.S. Spearing (“Spearing”), was not a director / officer at the time that wages were earned or should have been paid.

I have completed my review of the written submissions made by the appellants and the information provided by the Director.

FACTS

Milligan was employed by Licefa International Inc. operating “Optique 21” as a dispensing optician from December 12, 1993 to March 31, 1994.

A Record of Employment (“ROE”) was issued by Licefa International Inc., dated April 6, 1994, signed by Eric Richard Mortell and indicating that Milligan had quit his employment to take a position with another firm.

Milligan filed a complaint with the Employment Standards Branch alleging that Licefa International Inc. had made an illegal deduction from his pay in the amount of \$ 213.54 and that termination pay was owing.

The Director investigated Milligan’s complaint and, subsequently, the determinations were issued for the illegal deduction.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. Who was the employer of Milligan ?

2. Was the deduction of \$ 213.54 contrary to the provisions of the *Act* ?.
3. Was Michael P.S. Spearing a director / officer at the time wages were earned or should have been paid to Milligan ?

ARGUMENTS

The appellants argue that:

- the corporate entity now known as Licefa International Inc. was not the employer of Milligan as it only became Licefa International Inc. on September 29, 1994, after Milligan's period of employment had ended;
- in any event, Michael P.S. Spearing was not a director / officer of Licefa International Inc. at the time wages were earned or should have been paid to Milligan.

The Director contends that:

- the ROE clearly indicates that the employer of Milligan was Licefa International Inc.;
- the "full & final pay" cheque issued to Milligan indicates the payor as Licefa International Inc.;
- Registrar of Companies search indicates that the directors / officers named in the determinations were directors / officers of Licefa International Inc.;
- the deduction from Milligan's final pay is contrary to the *Act*.

ANALYSIS

With respect to issue #1, who was the employer of Milligan I must consider the documentary evidence submitted.

There is no doubt that Milligan was employed from December 12, 1993 to March 31, 1994 by a corporate entity known as Licefa International Inc. . This is supported by both the ROE issued by the employer and the copy of the final pay cheque.

The Registrar of Companies search indicates that:

- a corporate entity under incorporation number 0257797 was incorporated on December 15, 1982 as "Morty's Deli Ltd."
 - this corporate entity underwent a name change to "Licefa International Inc." on March 6, 1984;

- this corporate entity underwent another name change to “257797 B.C. Ltd.” on June 4, 1985;
 - this corporate entity underwent another name change to “Licefa International Inc.” on July 5, 1985;
 - this corporate entity underwent another name change to “257797 B.C. Ltd.” on August 19, 1994;
 - Darlene Marie Mortell is listed as a director / officer
-
- a corporate entity under incorporation number 0277060 was incorporated on April 18, 1984 as “Goldayre Ventures Inc.”
 - this corporate entity underwent a name change to “Golden Triangle Resources Inc.” on May 14, 1984;
 - this corporate entity underwent another name change to “Triangle Resources Inc.” on April 28, 1987;
 - this corporate entity underwent another name change to “Mortcorp Enterprises Inc.” on October 19, 1990;
 - this corporate entity underwent another name change to “Licefa International Inc.” on September 29, 1994;
 - Darlene Mortell, Eric Richard Mortell, Michael P.S. Spearing and Melvin N. Zajac are listed as directors / officers.

Section 1 of the *Act* defines employer as:

“**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;

There has been no information submitted to indicate that the corporate entity now known as Licefa International Inc. was the employer of Millgan as defined in the *Act*.

While there is indication of common control and direction through the overlapping of directors / officers between the two corporate entities, the Director has chosen not to treat them as associated corporations pursuant to section 95 of the *Act*, therefore, based on the information as set forth above, I must conclude that the corporate entity known as Licefa International Inc. (incorporation no. 0257797) at the time of Milligan’s employment has now become the corporate entity known as **257797 B.C. Ltd.** (incorporation no. 0257797) and is the employer against whom the determinations should have been issued.

Therefore, having concluded that the corporate entity presently known as Licefa International Inc.(incorporation no. 0277060) was not the employer, issues #2 and #3 need not be addressed.

I conclude, based on the above reasons, that the determinations must be cancelled.

ORDER

Pursuant to Section 115 of *Act*, I order that Determinations No. CDET 000964, DDET 000099, DDET 000100, DDET 000101 and DDET 000102 be cancelled.

Hans Suhr
Adjudicator
Employment Standards Tribunal

May 3, 2001

Date

:jel