

An appeal

- by -

M.J.M. Conference Communications of Canada Corporation  
(“MJM”)

- 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:** M. Gwendolynne Taylor

**FILE No.:** 2000/745

**DATE OF DECISION:** March 2, 2001

## DECISION

### WRITTEN SUBMISSIONS BY:

Michael McGrath	on behalf of M.J.M. Conference Communications of Canada Corporation, appellant/employer
Chris Yorke	on his own behalf
Victor Lee	on behalf of the Director

### OVERVIEW

This is an appeal by M.J.M. Conference Communications of Canada Corporation (“MJM”) pursuant to section 112 of the *Employment Standards Act* (“the Act”) from a determination dated October 5, 2000 (#ER 99679) by the Director of Employment Standards (“the Director”).

Yorke was employed by MJM, a newspaper publisher, as a graphic designer on the production of the Canadian Miner. He was employed from June 21, 1999 to February 1, 2000 at the rate of \$500 per week. The contract, dated June 21, 1999, specified \$500 per week plus \$1,000 bonus on each release.

MJM and Yorke agreed that MJM owed Yorke \$1,454.63. The issue was whether Yorke was an employee or a contractor and thus whether the money owed constituted wages recoverable through the mechanism of the *Act*.

The Director found that Chris Yorke (“Yorke”) was an employee and that the sum of \$1,454.63 was owed as regular wages. The Director also found that compensation for length of service was owed and calculated it at \$416.00, for a total determination of \$1,870.63, plus \$87.98 in interest under section 88. The Director ordered MJM to pay \$1,958.61 and noted: “If statutory deductions are required, please include a statement with your payment indicating the individual amounts remitted to Canada Customs Revenue Agency.”

MJM appealed the determination on the grounds that there were deductions to be made from \$1,958.61 for Employment Insurance (EI) and Canada Pension Plan (CPP). MJM also deducted \$1,000 to compensate for monies paid to Yorke as a contractor, in lieu of employee benefits. MJM calculated that it owed Yorke \$453.03.

## ISSUE

Whether MJM is entitled to make the deductions from the amount the Director found was owing.

## ARGUMENT

The Director submitted that the Branch has no jurisdiction over the calculation of the EI and CPP amounts. Statutory deductions for these plans are justifiable.

The Director took exception to the \$1,000 deduction, noting that MJM had not raised it during the investigation. The Director submitted that the definition of “wages” includes incentives relating to hours of work, production and efficiency. Since the contract does not say that the \$1,000 was a bonus in lieu of benefits, it should be viewed as an incentive, recoverable under the *Act*.

Yorke submitted that MJM is not entitled to deduct EI and CPP contributions from wages owed. He provided copies of correspondence from Canada Customs and Revenue and a T4 slip showing the amounts MJM indicated as deductions. Yorke also submitted that the \$1,000 was an integral part of the wage structure.

MJM submitted that the \$1,000 payment had not been argued during the investigation because it had not yet been determined that Yorke was an employee. MJM submitted that the bonus was not for hours of work, production and efficiency but as an extra for lack of benefits an employee would get, such as EI or CPP. Concerning the EI and CPP deductions, MJM noted that every employee has these deducted.

## ANALYSIS

I agree with MJM and the Director that statutory deductions for EI or CPP are required and justifiable. I agree with the Director that neither the Branch nor the Tribunal has jurisdiction over the amounts of the deductions. MJM did not have to include them in the appeal because the Director’s Determination included provision for them to be deducted, with a statement provided to show the amounts.

I find that MJM’s arguments on the \$1,000 bonus are not compelling. There is nothing on the face of the contract to suggest that this was in lieu of benefits. The contract says the bonus is to be paid “on each release.” In my view, that does not support an interpretation that it is to cover the benefits otherwise payable simply as a term of employment. If that was the intention, it would not be tied to the release.

I find that the \$1,000 was an incentive within the definition of “wages” and is recoverable under the *Act*.

**ORDER**

Pursuant to section 115, I dismiss the appeal and confirm the Director's Determination.

**M. GWENDOLYNNE TAYLOR**

**M. Gwendolynne Taylor  
Adjudicator  
Employment Standards Tribunal**