

An appeal

- by -

Lin Meyers
("Meyers")

- 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 (as amended)

TRIBUNAL MEMBER: Sheldon M. Seigel

FILE No.: 2009A/097 & 2009A/098

DATE OF DECISION: October 15, 2009

DECISION

SUBMISSIONS

Lin Meyers on her own behalf

Tyler Siegmann on behalf of the Director of Employment Standards

OVERVIEW

1. This decision is the culmination of two appeals by Lin Meyers (“Meyers”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), of a Determination that was issued on June 19, 2009, by a delegate of the Director of Employment Standards (the “Director”). The Determination found that the Employer had contravened sections 58 and 63 of the *Act*, in respect of the employment of eleven employees including Meyers, and ordered the Employer to pay to the Employees the amount of \$14,482.09. This amount included annual vacation pay, compensation for length of service, and accrued interest (s.88 of the *Act*).
2. The Director also imposed administrative penalties on the Employer under Section 29(1) of the *Employment Standard Regulation* (“*Regulation*”) in the amount of \$1,000.00 relating to the aforesaid sections of the *Act*.
3. Meyers submits that evidence has become available that was not available at the time the Determination was made and seeks that the Determination be referred back to the Director for reconsideration.
4. Meyers also asks the Tribunal to suspend the effect of the Determination pursuant to section 113 of the *Act*. The Tribunal dealt with the suspension request on a separate file.
5. Initially, the appeal and suspension request were only disclosed to the Employer and the Director of Employment Standards. The Director’s Delegate filed a response. The Tribunal subsequently disclosed both the appeal and the suspension file to the other employees and requested a reply. No reply was forthcoming.
6. Meyers argues that Penny Pinchers Thrift Stores (1995) Ltd., found in the determination to be the Employer liable for the wages and penalties payable, was not the employer that should have been liable for the payments. She submits that another corporate entity was responsible for the wages.

ISSUES

7. The issues in these appeals are whether new evidence became available that was not available at the time the Determination was made and whether this is an appropriate case to suspend the determination pursuant to s. 113(2) of the *Act*.

ARGUMENT

8. Meyers submits that the beneficial owners of the entity for which she worked changed near the time that she took vacation days and that the new owners paid her for those vacation days. She claims that the Employer does not owe her wages as concluded in the Determination. There is some confusion in her submissions as to whether she believes another corporate entity might be liable for some of her wage entitlement.

9. The Director submits that all of the information contained in Meyers' submissions was available at the time of the investigation leading up to the Determination and that the Determination was based on a full analysis of the evidence available at that time.
10. With respect to the request for a suspension, the Director submits that the Appellant, as a complainant, is not liable for the payment ordered by the Determination and is therefore not entitled to a suspension under s.113 of the *Act* as that section is for the benefit of Employers only.

ANALYSIS

11. The Tribunal file and the Determination are clear that Meyers as well as the other ten employees maintained throughout the complaint process that the Employer contravened the *Act* by failing to pay annual vacation pay. The Employment Standards Branch conducted an investigation and determined that the Employer was liable for outstanding wages. The issue of the beneficial ownership of the corporate Employer was known during all relevant periods of the complaint, investigation, and Determination, and the change of ownership was not found to be relevant to the Determination. Meyers has not provided any evidence that was not available at the time the Determination was made, nor has she provided any insight into the relevance to the wages owed the employees of a change of beneficial owners of the Employer or another numbered company identified in her appeal.
12. Section 113 of the *Act* provides:

Director's determination may be suspended

113 (1) A person who appeals a determination may request the tribunal to suspend the effect of the determination.

(2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either

(a) the total amount, if any, required to be paid under the determination, or

(b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.

13. The Director argues "since the Appellant is not liable for any wages, it would seem that her request for suspension is inappropriate." Or in other words, that this section does not allow an appeal by an employee. The Director says that 113(2) indicates that the party liable for payment under the determination must pay the funds to the Director in advance of the suspension. I disagree with the Director's conclusion. Although s.113 is typically utilized in the fashion described by the Director, s.113(2)(b) allows the Tribunal to order "a smaller amount that the tribunal considers adequate in the circumstances" be deposited. A smaller amount might include an amount that the Director feels is appropriate in the nature of a bond or showing of commitment to the process, or sufficient to ensure no abuse of the process by the party seeking the suspension. The Director has not convinced me that the application of s. 113 should be so limited. The Director also submitted "a suspension would only impede the collection of wages for the 11 complainants." Though axiomatic this statement has some relevance to this situation. There are ten Employees other than Meyers who have been deemed entitled to wages. Meyers has not provided any argument that supports the benefit of further delaying their compensation for wages.

14. Although the Director has not persuaded me that s.113 is only available to employers, neither has Meyers persuaded me that the Tribunal should exercise its discretion to order an amount to be deposited with the Director in order to suspend the effect of the Determination.

ORDER

15. Pursuant to section 115 of the *Act*, I order the Determination, dated June 29, 2009, be confirmed.

Sheldon M. Seigel
Member
Employment Standards Tribunal