

An application for suspension

- by -

Cellular Baby Cell Phone Accessories Specialist Ltd. and B-Mobile
Telecommunication Inc.

(“Cellular”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

Pursuant to section 113 of the
Employment Standards Act R.S.B.C. 1996, C. 113 (as amended)

TRIBUNAL MEMBER: Carol L. Roberts

FILE No.: 2012A/99

DATE OF DECISION: October 5, 2012

7. Counsel for Cellular says that the amount awarded to some of the employees exceeds the amount claimed and that to require Cellular to pay monies on these increased amounts before the appeal is decided will prejudice Cellular since the amount awarded to some of the employees “do not have any relation to the risk presented to the Appellant in the first place”.
8. Cellular says that because it is not in possession of each employee’s current contact particulars, if its appeal is successful, it will suffer prejudice in attempting to collect money paid out to the employees if the suspension application is not granted. Moreover, it submits, it will be required to commence seven separate collections actions for small amounts rather than a single action for the entire amount, a duplication of effort which would further prejudice it.
9. Cellular submits that the appeal has merit and that a suspension may operate to encourage a timely settlement.
10. The Director confirmed that Cellular had deposited the full amount of the Determination with the appeal and did not oppose the suspension request.

ANALYSIS

11. Section 113 of the *Act* provides as follows:
 - (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.
12. The Tribunal will not suspend the effect of a Determination in circumstances where the grounds of appeal are frivolous or have no apparent merit; however it may suspend where the appeal may have some merit. (*Tricom Services Inc.*, BC EST # D420/97; *TNL Paving Ltd.*, BC EST # D397/99)
13. While it is not the function of the Tribunal Member to conduct an extensive analysis of the merits of an appeal on a suspension application, I am persuaded that the appeal has some merit. Without expressing an opinion on those merits, the appeal raises issues of law which will require serious consideration by the Tribunal.
14. As none of the employees made any submissions in response to Cellular’s application, I infer that the only prejudice they may suffer if Cellular is unsuccessful on appeal would be a short delay in receiving funds that have been determined owing.
15. Having received no submissions opposing the application and after a consideration of all of the other factors, I find no reason not to grant the application to suspend the effect of the Determination.

ORDER

16. Pursuant to section 113 of the *Act*, I allow the application to suspend the effect of the Determination pending the outcome of the appeal.

Carol L. Roberts
Member
Employment Standards Tribunal