

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act S.B.C. 1995, C. 38

- by -

Sharnil Trucking Ltd.
("the Appellant ")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 96/778

DATE OF DECISION: March 9, 1997

DECISION

OVERVIEW

This is an appeal by Sharnil Trucking Ltd. pursuant to Section 112 of the *Employment Standards Act* (“the *Act*”) against Determination No. CDET 004840, issued on November 28, 1996 by Lynne Egan, a delegate of the Director of Employment Standards.

The Determination found that Sharnil Trucking Ltd. and Ken’s Auto Towing Ltd. (“Ken’s Auto”) were associated pursuant to Section 95 of the *Act*. A previous determination had ordered that Ken’s Auto owed Mr. Marcel Gaucher \$6,408.45. The determination in question affirmed that the Appellant was liable for the amount in the determination involving Ken’s Auto, plus additional interest.

ISSUE TO BE DECIDED

Are Sharnil Trucking Ltd. and Ken’s Auto Towing Ltd. associated pursuant to section 95 of the *Act*?

FACTS

Marcel Gaucher filed a complaint against Ken’s Auto Towing Ltd. alleging non-payment of statutory holiday pay and annual vacation pay. The Director’s delegate issued Determination No. CDET 003647 on August 9, 1996 against Ken’s Auto Towing Ltd., ordering payment of \$6,679.19. A demand notice issued to a financial institution resulted in payment of \$241.27 to the Director as partial settlement of the determination. The deadline for an appeal against Determination No. 003647 with the Tribunal was September 3, 1996. No appeal was filed.

Determination No. DDET No. 000487 was issued against Mr. Kisun Singh, a director/officer of Ken’s Auto Towing Ltd., on October 23, 1996 in the amount of \$4,815.83. The delegate stated that the amount in the determination in respect of Mr. Singh was based on his liability for two months’ wages, plus vacation pay and accrued interest. The deadline for filing an appeal with the Tribunal was November 15, 1996, and no appeal was filed.

The determination in question found that Ken’s Auto is associated with Sharnil Trucking Ltd. The basis for the determination was that Ken’s Auto Towing Ltd. employed Mr.

Gaucher to drive a truck owned by Sharnil Trucking Ltd. Ken's Auto and Sharnil Trucking Ltd. operate under the common direction of Mr. Kisun Singh of 7826 116A Street, Delta, B. C. Sharnil Trucking Ltd. contracts trucking services to Overland Freight Lines Ltd. Together, Sharnil Trucking Ltd. and Ken's Auto Towing Ltd. provided a vehicle and driver to Overland Freight Lines Ltd.

In its appeal, dated December 23, 1996. the Appellant states that Mr. Gaucher received statutory holiday and vacation pay, since Mr. Gaucher and the Appellant agreed that he would be paid based on a percentage of the earnings of the truck he drove. It further asserts that the determination in respect of Mr. Kisun Singh is incorrectly calculated, being based on 24 months' pay, not the two months to which liability is limited pursuant to Section 96 of the *Act*.

ANALYSIS

Section 95 of the *Act* states:

If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,

(a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and

(b) if so, they are jointly and separately liable for payment of the amount stated in the determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

Section 112 of the *Act* sets out the procedures, including deadlines, for the appeal of determinations, including deadlines for filing appeals.

The Appellant in this case presented no evidence or argument with respect to the Determination in question, which was concerned with the application of Section 95 to Sharnil Trucking Ltd. and Ken's Auto Towing Ltd. The arguments really were addressed to the issues covered by the two earlier determinations, in particular Determination No. 003647.

The Appellant bears the onus of persuading the adjudicator that the Determination in question was incorrect. It did not present any evidence or argument to discharge that onus.

ORDER

After considering the evidence and argument, I find that Determination No. CDET 004840 issued by Ms. Egan should be confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal