

An appeal

- by -

Estate of Langley Twin Rinks Ltd.  
("Twin Rinks")

- 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:** David B. Stevenson

**FILE No.:** 2001/882

**DATE OF DECISION:** April 4, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Langley Twin Rinks Ltd. (“Twin Rinks”) of a Determination that was issued on December 7, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Praxis had contravened Part 3, Section 18 and 23, Part 7, Section 58 and Part 8, Section 63 of the *Act* in respect of twelve employees affected by the receivership and bankruptcy of Twin Rinks, and ordered Twin Rinks to cease contravening and to comply with the *Act* and to pay an amount of \$45,417.86.

Twin Rinks says the Determination is incorrect in respect of two persons included in the Determination, Heather Steeple, who Twin Rinks says was not an employee at any material time, and John Morrison, who Twin Rinks says was not entitled to the vacation pay calculated in the Determination. The amount in issue in respect of the former individual is \$122.70 and in respect of the latter, \$5,782.13 plus interest calculated under Section 88 of the *Act*.

### ISSUE

The issue in this appeal is whether Twin Rinks has shown the Determination was wrong in a manner that justifies the intervention of the Tribunal under Section 115 of the *Act* to cancel or vary the Determination, or to refer it back to the director.

### FACTS

Twin Rinks operated an ice rink facility in Langley, BC. On July 16, 2001, it was placed in receivership and on August 20, 2001 was petitioned into bankruptcy. It was brought to the attention of the Director that several employees affected by the receivership and bankruptcy had outstanding wage claims. An investigation was conducted and the Determination issued. The Determination noted that the amounts claimed had been reviewed with the receiver and the former General Manager and accountant of Twin Rinks and were not disputed by the receiver.

The appeal itself was filed on behalf of Twin Rinks. The document sets out the reasons for appeal as follows:

1. Heather Steeple was not at any material time an employee of the company for the purposes of the Employment Standards Act.
2. The determination of vacation pay allegedly owed to John Morrison is unsubstantiated by any documentation and in fact it is the company’s position that Mr. Morrison has taken vacation in lieu of vacation pay.

Twin Rinks has been authorized by the receiver to pursue the appeal.

### **ARGUMENT AND ANALYSIS**

The burden is on Twin Rinks, as the appellant, to persuade the Tribunal that the Determination was wrong, in law, in fact or in some manner of mixed law and fact.

There is nothing in the appeal or the material or argument supporting the appeal in respect of Heather Steeple and that part of the appeal is summarily dismissed.

The submission from Twin Rinks in respect of the calculation of Mr. Morrison's annual vacation states, in part:

There is no evidence as to what Mr. Morrison was entitled by way of vacation. If Mr. Morrison is entitled to the statutory minimum of 4% then, based on a \$60,000.00 per annum, that would amount to \$2400.00 against which ought to be deducted the equivalent of 8 days . . . .

There appears to be two assertions upon which the appeal is grounded: first, that Mr. Morrison was entitled to the statutory minimum vacation entitlement of 4% a year; and second, that his vacation entitlement should be based on only one years' salary, \$60,000.00. Neither assertions are supported by the material on file.

Mr. Morrison has filed a response to the appeal as it affects to his annual vacation entitlement under the *Act*. He has acknowledged having taken 8 days of holidays over the last year of service with Twin Rinks. He has also submitted copies of his employee wage summaries for the years 2000 and 2001, showing he has received an amount of \$1,846.40 in annual vacation pay during those years on a salary of just over \$92,700.00. The wage summaries provided by Mr. Morrison state a vacation entitlement of 8%. The Director based the annual vacation entitlement for Mr. Morrison on 8%. Presumptively, the Director has decided that Mr. Morrison was entitled to 8% annual vacation pay. Twin Rinks has not shown that decision to be wrong. Accordingly, I do not find the Director made any error in calculating annual vacation entitlement and this aspect of the appeal is also dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated December 7, 2001 be confirmed in the amount of \$45,417.86, together with any interest that has accrued pursuant to Section 88 of the *Act*.

---

**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**