

An application for suspension

- by -

Babine Forest Products Ltd.
("Babine")

- 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.: 2010A/159

DATE OF DECISION: December 2, 2010

DECISION

SUBMISSIONS

Alissa Macpherson

Counsel for Babine Forest Products Ltd.

Hans Suhr

on behalf of the Director of Employment Standards

OVERVIEW

1. Babine Forest Products Ltd. (“Babine”) has appealed a Determination of the Director of Employment Standards (“the Director”) issued September 24, 2010, ordering it to pay \$8,605.85, representing wages and accrued interest owed to a former employee (the “Complainant”) and an administrative penalty in the amount of \$1,000.00 for contraventions of sections 18 and 28 of the *Employment Standards Act* (the “*Act*”).
2. Babine appealed the Determination on November 1, 2010, within the statutory appeal period. It also seeks a suspension of the Determination pursuant to Section 113 of the *Act* pending the outcome of its appeal. Babine has deposited the total amount payable, minus statutory deductions, with the Director in trust pending the appeal and suspension decision.
3. This decision addresses only the suspension request.

FACTS AND ARGUMENT

4. Babine agrees with the delegate’s finding that the employee was a manager and not entitled to overtime pay. However, it disagrees with the delegate’s interpretation of the Complainant’s employment contract. Babine contends that the delegate erred in law in concluding that the Complainant is entitled to pay for hours worked in excess of 40 hours per week.
5. The delegate did not oppose the suspension application, but requested that it be granted subject to Babine providing documentation supporting the amount and purpose of the statutory deductions, with a copy to all parties.
6. Babine subsequently provided the parties with a breakdown of the deductions from the amount paid into trust.

ANALYSIS

7. 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.

8. 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)
9. The appeal was filed within the statutory time period for filing an appeal and the amount, less appropriate statutory deductions, has been deposited with the Director in trust. The Director does not oppose the suspension application.
10. The issue to be determined on appeal is whether or not the delegate erred in his interpretation of the employment contract. Having reviewed the appeal submission and without addressing the merits of that appeal, I conclude that there is a *prima facie* case to be decided regarding the appropriate legal principles to be applied to contract interpretation and whether or not those principles were correctly applied to the contract between Babine and the Complainant.
11. I find that a suspension order should be granted.

ORDER

12. Pursuant to section 113 of the *Act*, I grant the application to suspend the Determination.

Carol L. Roberts
Member
Employment Standards Tribunal