

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Quesnel Audiology and Hearing Aid Centre Inc.
("QA")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Hans Suhr
FILE NO.:	1998/754
DATE OF HEARING:	March 22, 1999
DATE OF DECISION	March 29, 1999

DECISION

APPEARANCES

Shelley Corbett on behalf of Quesnel Audiology and Hearing Aid Centre Inc.

Lucas Jurek on behalf of Quesnel Audiology and Hearing Aid Centre Inc.

Ann Stackhouse on her own behalf

Grant McLeod on behalf of Ann Stackhouse

OVERVIEW

This is an appeal by Quesnel Audiology and Hearing Aid Centre Inc. (“QA”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated November 9, 1998 issued by a delegate of the Director of Employment Standards (the “Director”). QA alleges that the delegate of the Director erred in the Determination by concluding that QA owes compensation for length of service to Ann Stackhouse (“Stackhouse”) in the amount of \$203.24 (includes interest).

PRELIMINARY ISSUE

QA submits that the delegate of the Director erred in the Determination by naming Quesnel Audiology and Hearing Aid Centre Inc. as the employer of Ann Stackhouse (“Stackhouse”).

QA further submits that while Quesnel Audiology and Hearing Aid Centre Inc. currently exists, it did not exist at the time that Stackhouse was hired and at no time did that corporate entity employ Stackhouse.

QA presented photocopies of cheques issued to Stackhouse which indicated that on one occasion Stackhouse was paid by “Shelley Jurek operating as Quesnel Audiology and Hearing Aid Centre” and on another occasion by “Cariboo Hearing Services Inc.”. QA referred to the Record of Employment (“ROE”) which indicated that the employer was “Quesnel Audiology and Hearing Aid Centre”.

QA further submits that the first indication that the corporate entity “Quesnel Audiology and Hearing Aid Centre Inc.” was to be named as the employer of Stackhouse was when the Determination was received.

QA finally submits that as there is no evidence that “Quesnel Audiology and Hearing Aid Centre Inc.” was the employer of Stackhouse, the Determination should be cancelled.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Quesnel Audiology and Hearing Aid Centre Inc. was the employer of Stackhouse?

FACTS

The following facts are not in dispute:

- Quesnel Audiology and Hearing Aid Centre Inc. is named as the employer in the Determination;
- Stackhouse agrees that information she provided to the delegate of the Director does not identify Quesnel Audiology and Hearing Aid Centre Inc. as the employer.

ANALYSIS

The onus of establishing that the delegate of the Director erred in the Determination rests with the appellant, in this case, QA.

The *Act* in Section 1 defines ‘employer’ as:

"employer" includes a person

- (a) *who has or had control or direction of an employee, or*
- (b) *who is or was responsible, directly or indirectly, for the employment of an employee;*

There was no evidence provided to indicate that an employer-employee relationship existed between Stackhouse and Quesnel Audiology and Hearing Aid Centre Inc.

The *Act* provides, among other requirements, that the Director has the authority to “investigate after or without a complaint” (Section 76), “must make reasonable efforts to give a person under investigation an opportunity to respond” (Section 77) and, “may make a determination” (Section 79), “must serve any person named in the determination” (Section 81). The inherent qualifier however, in all of the above, is the necessity of having determined who is the employer.

There was no evidence that there was any request to QA for any records from the delegate of the Director during the course of the investigation.

The evidence was that the payroll records provided and, presumably relied upon, were provided to the delegate by Stackhouse.

For all of the above reasons, I conclude that the Determination names a corporate entity which has not been shown to be the employer of Stackhouse.

My conclusion does not however, preclude the Director from determining who the actual employer was and, after investigating the circumstances, issuing a Determination against that employer.

Furthermore, it must be noted that I have not made any determination with regards to the merits of this matter

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated November 9, 1998 be cancelled.

Hans Suhr
Adjudicator
Employment Standards Tribunal