

An appeal

- by -

IFM International Marketing and Finance Corporation  
(“IFM”)

- 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:** Carol Roberts

**FILE No.:** 2001/584

**DATE OF HEARING:** April 9, 2002

**DATE OF DECISION:** April 12, 2002

## DECISION

### APPEARANCES:

David A. Swan

On behalf of IMF International Finance and Marketing Corporation in bankruptcy

### OVERVIEW

This is an appeal by IMF International Finance and Marketing Corporation ("IMF"), pursuant to Section 112 of the *Employment Standards Act* (the "*Act*"), against a Determination of the Director of Employment Standards (the "Director") issued July 18, 2001. The Director found that IMF contravened Sections 17,18,21 and 58 of the *Act* in failing to pay Bal Gill and Pamela Vales wages and vacation pay, and Mr. Gill expenses, and Ordered that IMF pay \$12,287.74 to the Director on the employees' behalf. The Director found that a claim for wages and vacation pay by Lorraine Bennett had not been substantiated. After IMF filed its appeal, the delegate acknowledged that there had been "an administrative error in the calculation of annual vacation pay for Lorraine Bennett and Pamela Vales". I have inferred that the Determination has been amended in that respect. Consequently, the only outstanding award is in respect of wages and expenses owing to Mr. Gill.

Subsequent to the Determination being issued, IMF became bankrupt. Campbell Saunders Ltd., the Trustee in Bankruptcy, has adopted IMF's appeal.

### ISSUE TO BE DECIDED

Whether the Director erred in determining whether compensation was owed to Mr. Gill.

### FACTS

Mr. Gill was employed by IMF, a wireless high-speed Internet connection company, until December, 2000. He contended that he was not paid wages for the month of December, and that he did not receive vacation pay for the period October 1, 2000 to December 31, 2000. IMF did not deny that Mr. Gill was not paid for December, but disputed the amount owed to him.

Mr. Gill also advised the delegate that he was told to order networking equipment for company installations, and that he did so, and put the equipment on his credit card. Mr. Gill says that he was never reimbursed for that equipment.

IMF advised the delegate that Mr. Gill was instructed to take December 27 to December 29 off as paid vacation. Mr. Gill acknowledged that he was given these instructions, and that the office was closed for that period of time, but that he was nevertheless required to work those days.

The delegate concluded that Mr. Gill was entitled to wages for the entire month of December.

The delegate also found that Mr. Gill was entitled to reimbursement for the cost of equipment he purchased on behalf of the company, pursuant to s. 21(2) of the Act. Mr. Gill acknowledged that he retained this equipment at his home, despite a request from IMF that he return it.

## **ARGUMENT**

Mr. Swan's evidence was that he was the only officer of IMF in the premises on December 27, 28 and 29. He says that he locked the doors behind him, and never saw Mr. Gill, or anyone else, in the office on those days. Further, he says that the systems monitor, which tracks employee's entrances through the use of their security card, showed no evidence of entry by Mr. Gill. As the only person answering telephones, Mr. Swan was also responsible for dispatching "on-call" workers those days, and he testified that he received no on-call requests.

Mr. Swan also stated that he spoke to the Network Engineer and the Administrator at MPS Development, where Mr. Gill says he was installing a T1 voice circuit on December 27. They both advised him that its offices were closed those days, and no on-site access was possible. Further, Mr. Swan states that Mr. Gill had been attempting to make the MPS Development's T1 facility work throughout November and December. On December 15, MPS Development directed that IMF make no further attempts to do so, and ordered new telephone equipment. Mr. Swan argues that there would be no reason for Mr. Gill to be working on the T1 installation on December 27 in any event.

Mr. Swan concedes that Mr. Gill may have been asked by management to purchase equipment to make other equipment operate, as they relied on Mr. Gill's expertise on what was needed to resolve an urgent problem. However, he states that he asked Mr. Gill to return the installation equipment, which was unsuccessful in doing what Mr. Gill said it would do, on December 28, and Mr. Gill refused.

Mr. Gill acknowledges refusing to return the equipment, even though he has no use for it, as he has not been paid for it.

## **ANALYSIS**

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I find that burden has been met in part.

On a balance of probabilities, I accept that Mr. Gill did not work for IMF on December 27, 28 and 29. Mr. Swan was at work, and neither saw Mr. Gill at work nor called him, or referred a call to him. Further, the security records demonstrate that Mr. Gill did not enter the building. Further, the evidence is that Mr. Swan delivered a paycheque to Mr. Gill at his home on December 28. There would be no reason for Mr. Swan to do so had Mr. Gill been in the office. Further, the evidence is that MPS Development offices were closed over that period in December, and Mr.

Gill would not have had access to them. In any event, I am also satisfied that, even if Mr. Gill had access, the reason for his presence was no longer required, as MPS had ordered new equipment from another company. I allow the appeal in respect of this portion of the Determination.

There is no dispute that Mr. Gill was asked by IMF to purchase equipment on its behalf, and that Mr. Gill has not been reimbursed for that cost, in contravention of s. 21(2) of the Act:

An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.

Mr. Swan contends that, had Mr. Gill returned the equipment to IMF, IMF could have returned it to the vendor for a refund. That may still be possible, and IMF is free to attempt to do so once Mr. Gill is compensated for the cost of purchase.

## **ORDER**

I Order, pursuant to Section 115 of the *Act*, that the Determination dated July 18, 2001 be varied as follows:

The award in respect of wages and vacation pay for Pamela Vales is cancelled. The award in respect of wages and vacation pay for Bal Gill is varied as noted above. That portion of the Determination awarding Mr. Gill cost of doing business expenses is confirmed.

---

**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**