

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 -

523396 B.C Inc. operating Wytek Electronics
("Wytek")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	David Stevenson
FILE NO.:	1998/815
DATE OF HEARING:	March 29, 1999
DATE OF DECISION:	April 7, 1999

DECISION

APPEARANCES

For the Appellant	Johanna Farough Glen Farough
For the Individuals	in person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") by 523396 B.C. Inc. operating Wytek Electronics ("Wytek") of a Determination of a delegate of the Director of Employment Standards (the "Director") dated December 11, 1998.

The Determination concluded that the two complainants, John Ouellette and Michael Bobaly, were employees of Wytek under the *Act*, that Wytek had contravened Sections 18, 40 and 58 of the *Act* in respect of their employment, ordered Wytek to cease contravening the *Act* and to pay an amount of \$6853.67

Wytek appealed the Determination on the basis that Mr. Ouellette and Mr. Bobaly were not employees, but rather that Mr. Ouellette operated his own business and had entered an agreement with Wytek to operate that business out of premises that Wytek had vacated and that Mr. Bobaly was his employee, not Wytek's.

During the hearing the parties were invited to consider agreeing to settle the appeal and complaint and were able to do so on the following terms:

1. Wytek will pay an amount of \$3500.00, comprising \$3225.00 wages and \$275.00 interest pursuant to Section 88 of the *Act*, to John Oullette;
2. Wytek will pay an amount of \$1200.00, comprising \$1104.31 wages and \$95.69 interest pursuant to Section 88 of the *Act*, to Michael Bobaly;
3. Statutory deductions will be made on the amounts in a manner most advantageous to the individuals;
4. Mr. Bobaly will pay an amount of \$199.08 to Wytek and such payment will be confirmed before any money is paid to him under this settlement; and
5. Wytek will forward two cheques, one payable to each of the individuals, to the delegate of the Director responsible for this file and shall advise the delegate whether Mr. Bobaly has paid the amount required under paragraph 4.

As a result of the agreement, that part of the appeal relating to whether Mr. Ouellette and Mr. Bobaly are employees is dismissed and the amount shown in the Determination will be varied.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated December 11, 1998 to be varied to show the amount owed as \$4329.31, plus \$370.69 interest pursuant to Section 88 of the *Act*.

David Stevenson
Adjudicator
Employment Standards Tribunal