



An appeal

- by -

Charest & Berthelot Logging Ltd.  
("C&B")

- 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:** Michelle Alman

**FILE No.:** 2000/784

**DATE OF DECISION:** April 3, 2001

## DECISION

### OVERVIEW

This decision addresses an appeal filed pursuant to section 112 of the *Employment Standards Act* (the "Act") by Charest & Berthelot Logging Ltd. ("C&B") from a Determination issued October 27, 2000 by a delegate of the Director of Employment Standards ("the Director"). The Determination concluded that C&B had contravened section 18(2) of the Act by failing to pay in a timely fashion wages, vacation pay and statutory holiday pay owed to its employee, Sean Cooper ("Cooper"), in the amount of \$2,410.26. That amount is owing for work performed by Cooper between November 15, 1999 and December 31, 1999. The Determination includes no amount for the mandatory statutory interest owed pursuant to section 88(1) of the Act.

C&B appeals from the Determination, alleging that the Determination was in error because it had ceased to operate after November 15, 1999 and Cooper is owed wages from another company for the period between November 15, 1999 and December 31, 1999.

The parties made written submissions in this appeal. C&B offered no reply submissions further to the Director's submissions. Cooper made no submissions at any point.

### ISSUES

The issues to be decided are whether Cooper was an employee of C&B or another company between November 15, 1999 and December 15, 1999, and if he was an employee of C&B, whether he is owed wages, vacation pay and statutory holiday pay by C&B in the amount set out in the Determination.

### THE FACTS AND ANALYSIS

C&B is a logging company operating out of Cranbrook. In mid-1999 C&B had two principals, Roger Charest ("Charest") and Rachael Berthelot ("Berthelot"). Berthelot's husband, Rick Berthelot ("RBerthelot"), operated C&B's logging equipment and supervised its operations in the field. Charest apparently had responsibility for C&B's payroll and accounting. The Determination states that Cooper worked for C&B as a faller/buckerman between June 17, 1999 and December 31, 1999. Cooper took instructions at the job site from RBerthelot, and on his instruction, turned in his hours to Charest for payment. Charest issued the cheques but they had to be signed by both C&B principals.

In his appeal submissions Charest alleges that by the fall of 1999 C&B was having financial difficulties because it was earning too little from its operations. He alleges that C&B's financial problems were the result of RBerthelot's having contracted in his own interest to do logging work for a sawmill in the Salmo area. Charest further alleges that RBerthelot used C&B's

equipment and Cooper's labour for the benefit of Horsepower Logging ("Horsepower"), a company controlled by RBerthelot. In support of his allegations Charest provides a copy of some paperwork from the Salmo saw mill which shows Horsepower as having harvesting rights for a timber mark which Charest alleges was C&B's to harvest.

Charest states in his submissions that upon learning in early November, 1999 that RBerthelot was diverting earnings from C&B, Charest told RBerthelot on November 15, 1999 that the C&B business was at an end. Charest also alleges that he attempted to recover C&B's equipment from RBerthelot, but was unsuccessful until the police located it for him on December 31, 1999. Charest does not state that he ever communicated directly to Cooper that C&B had ceased to operate on November 15, 1999.

The Determination records that Charest stated he was paying Cooper up until November 15, 1999. After that date, Charest refused to pay out any more monies until the company received some of the revenues being earned by the sale of the wood Cooper and RBerthelot were harvesting. The Determination also records that Cooper said he was paid two advances totaling \$700.00 on Horsepower Logging cheques from RBerthelot for his work. Cooper gave no further indication of his understanding of which enterprise he was working for when he received Horsepower cheques as advances on his pay. He apparently stated to the Director's delegate that:

*"he just wants to be paid for the work he performed and does not want to get caught between the two partners and Rick Berthelot squabbling over the business."*

This statement lends support to Charest's report of a breakdown in the C&B business relationships, despite the ongoing existence of the company in the Provincial corporate registry as of October 24, 2000. I therefore find that by November 15, 1999 Charest had informed RBerthelot (and Berthelot, by implication) that C&B was no longer a going concern. Because Charest raises no issue with the amount of wages calculated as owed to Cooper in the Determination, I likewise find that the Determination is correct in stating that Cooper is owed \$2,410.26 in wages, vacation pay and statutory holiday pay.

The Director's delegate noted in the Determination that he had been unable to contact either of the Berthelots, in spite of numerous attempts. Accordingly, he decided that there was insufficient evidence of a formal end to C&B's employment of Cooper after November 15, 1999 for C&B to be relieved of liability for Cooper's wages owing from that date through December 31, 1999. In part, he did so on the basis of his finding of fact that:

*"Up until November 15/99 Cooper was receiving his wages from the employer [C&B]."*

This fact appears to be contradictory in light of Cooper's statement that he received wages characterized as an "advance" in the amount of \$700.00 from Horsepower.

The question that must be resolved first here is, "For whom was Cooper working between November 15, 1999 and December 31, 1999?" That question can best be answered by further inquiry with Cooper as to whom he believed he was working for when he received pay advances from Horsepower prior to November 15, 1999. It is not clear from the contradictory information in the Determination that Cooper was working for C&B at any point when he was in receipt of pay from Horsepower, or at any point after November 15, 1999. I say this in reliance in part on the above-noted statements in the Determination, and in part in reliance on the following provisions of the *Act*.

Section 1(1) of the *Act* states in relevant part:

### ***Definitions***

***1*** (1) *In this Act:*

***"employee"*** includes

(a) *a person...receiving or entitled to wages for work performed for another,*

(b) *a person an employer allows, directly or indirectly, to perform work normally performed by an employee,*

...

***"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;*

...

***"wages"*** includes

...

(c) *money...required to be paid by an employer to an employee under this Act,...*

...

***"work"*** means *the labour or services an employee performs for an employer whether in the employee's residence or elsewhere.*

Section 17(1) of the *Act* states:

### ***Paydays***

***17*** (1) At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee all wages earned by the employee in a pay period.

Cooper's receipt of two paycheques from another enterprise than C&B implies that Horsepower was paying him in accordance with the provisions of section 17(1) of the *Act*. That fact, coupled with Cooper's being directed in his work by RBerthelot, which work was performed for the economic benefit of Horsepower rather than C&B, may very well mean that Cooper's true employer in November and December, 1999 was Horsepower. There needs to be further inquiry conducted to ascertain the answers to the following questions:

- 1) Whom did Cooper believe he was working for when he and RBerthelot began the work in the Grandfork area;
- 2) Whom did Cooper believe he was working for when he received paycheques from Horsepower;
- 3) When did Cooper receive the paycheques from Horsepower, and were they issued further to Cooper's report of his work hours to RBerthelot rather than to Charest;
- 4) Did Cooper know of Charest's announcement to RBerthelot on November 15, 1999 that C&B was no longer a going concern, and if so, whom did Cooper believe he was working for thereafter; and
- 5) Did Cooper ever hear directly from Charest that he was no longer employed by C&B after November 15, 1999?

With the answers to these questions, it will be possible to assess whether C&B or Horsepower is responsible for payment of the amount of Cooper's wages as set out in the Determination.

## **ORDER**

Pursuant to section 115 of the *Act*, I order the Determination and Penalty issued October 27, 2000 referred back to the Director to address the matters raised in this decision, and to calculate the interest owing on Cooper's wages pursuant to section 88(1) of the *Act*.

**MICHELLE ALMAN**

**Michelle Alman**  
**Adjudicator**  
**Employment Standards Tribunal**