

An appeal

- by -

Louis Russo Sawmills (1998) Limited and Louis Russo Sawmills Inc.
and M. & L. Wood Preservers Ltd.

- 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 (as amended)

TRIBUNAL MEMBER: Matthew Westphal

FILE No.: 2005A/116

DATE OF DECISION: October 12, 2005

DECISION

SUBMISSIONS

J.W. (Jock) Craddock

On behalf of Louis Russo Sawmills Inc., Robert L. Russo and Antonio Russo

Rhona Beck

On behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Louis Russo Sawmills Inc. (“LRSI”) under s. 112 of the *Employment Standards Act* (the “*Act*”) of Determination ER #132-275, dated May 26, 2005 (the “Determination”), issued by a delegate (the “Delegate”) of the Director of Employment Standards. Following an investigation of complaints by Ryan Shier, Jason Knelsen, Gurpreet Nagra, Dustin Knelsen, Norma Arnold, and James Barnes (the “Complainants”), the Delegate ordered LRSI, Louis Russo Sawmills (1998) Limited and M. & L. Wood Preservers Ltd. to pay the complainants regular wages, annual vacation pay, and compensation for length of service, and imposed three administrative penalties, of \$500.00 each, for violations of sections 17, 18, and 63 of the *Act*.
2. The Tribunal has decided that this case can be decided without an oral hearing.

ISSUE

3. Did the Delegate err in issuing the Determination against LRSI as an associated employer of Louis Russo Sawmills (1998) Limited and M. & L. Wood Preservers Ltd.?

BACKGROUND

4. The Complainants worked at a sawmill and wood recycling business in Kelowna. Jason Knelsen, Dustin Knelsen, and Gurpreet Nagra were laid off on April 2, 2005. The business ceased operations when a bailiff seized its equipment on April 21, 2005. On that day Ryan Shier and James Barnes were told that there was no more work for them. Norma Arnold worked on April 21 and 22, 2005 performing administrative tasks and preparing Records of Employment for the laid-off employees, and was then laid off herself. These Records of Employment indicated that the reason for the Complainants’ termination was “Business closed due to court bailiff”.
5. The Complainants filed complaints with the Director of Employment Standards, claiming to be owed regular wages, vacation pay, banked overtime, and compensation for length of service.
6. The Delegate found that LRSI, Louis Russo Sawmills (1998) Limited, and M. & L. Wood Preservers Ltd., were all associated employers under s. 95 of the *Act*. The Delegate considered the four conditions for treating multiple entities as one employer for the purposes of the *Act*, and made the following findings:

1. There was more than one corporation: LRSI, Louis Russo Sawmills (1998) Limited, and M. & L. Wood Preservers Ltd.
 2. Each of these entities was carrying on a trade, business, or undertaking: Louis Russo Sawmills (1998) Limited was the official employer of the Complainants, and LRSI and M. & L. Wood Preservers Ltd. owned the equipment used in the business at the worksite.
 3. Louis Russo was a director and officer of all three companies, all three companies had the same registered and records office, and Louis Russo was the onsite manager directing the employees and controlling the assets used in the business.
 4. There was a statutory purpose in treating all three companies as one employer to ensure that wages owing would be paid, particularly given that the business had ceased operations.
7. The Delegate based her finding that LRSI was involved in the sawmill and wood recycling business on searches of the Personal Property Registry and the corporate registry. The Delegate also appears to have relied on the assertion by the bailiff that the equipment used in the business at the worksite was owned by M. & L. Wood Preservers and LRSI.
8. Louis Russo did not dispute that the Complainants were owed outstanding wages. He argued that they were not entitled to compensation for length of service, however, because they had only laid off with the intention of being recalled to work once the sawmill was moved to different premises and resumed operations. The Delegate rejected this argument, and found that the employment of all the Complainants had been terminated. Accordingly, she found that the employees were owed compensation for length of service in addition to the wages they had claimed.

SUBMISSIONS

9. Of the three companies found liable in the Determination, only LRSI has appealed it. LRSI has not taken issue with the Delegate's findings about the wages owing to the Complainants, or with the Delegate's imposition of administrative penalties. The sole basis for LRSI's appeal is that it should never have been found to be an associated employer with Louis Russo Sawmills (1998) Ltd. and M. & L. Wood Preservers Ltd. Robert Luigi Russo and Antonio Russo also appealed the Determination in their capacity as directors and officers of LRSI, and seek to be found not to be directors and officers of an associated employer.
10. LRSI maintains that the Delegate erred in treating it as one employer with Louis Russo Sawmills (1998) Ltd. and M. & L. Wood Preservers Ltd. because it was not involved in the sawmill and wood recycling business. LRSI argues that the company and Personal Property Registry searches relied upon by the Delegate did not establish that equipment owned by LRSI was used at the worksite. LRSI provided evidence that the only piece of equipment owned by LRSI that was on the property was a broken rough terrain forklift in the process of being rebuilt, and that this item was not even on the worksite itself. It also provided evidence that LRSI is a holding company, and owns another company that operates a separate sawmill business on different properties, using its own equipment, and with its own employees. It asserts, in particular, that LRSI has never engaged in the operation of a sawmill and wood recycling business at the worksite.
11. The Delegate, after reviewing the material provided by LRSI, stated that she did not dispute the appeal by Robert Russo and Antonio Russo. She also agreed that LRSI is not associated with Louis Russo

Sawmills (1998) Ltd. and M. & L. Wood Preservers Ltd. under s. 95 of the *Act*. The Delegate requested a variation of the Determination to remove LRSI from the style of cause.

ANALYSIS

12. The Delegate does not appear to have provided the Tribunal with the record that was before the director at the time the Determination was made, including any witness statement and document considered by the director, as she was required to do by s. 112(5) of the *Act*. (See *Super Save Disposal Inc. -and- Actton Transport Ltd.*, BC EST #D100/04, reconsidered in *Director of Employment Standards*, BC EST #RD172/04 for a discussion of the scope of this obligation.) However, given that the parties now agree on the material facts, and that counsel for LRSI provided the Tribunal with many of the relevant documents (such as the corporate and Personal Property Registry searches, and the Record of Employment for Ms. Arnold), I am able to adjudicate this appeal.
13. Although both LRSI and the Delegate agree that the Determination should be varied to remove LRSI as a party, that does not obviate the need for me to satisfy myself that such is the proper disposition of this appeal. That said, having reviewed the available material and the submissions of the parties, I am satisfied that in finding that LRSI was an associated employer of the Complainants because it owned equipment used in the business, the Delegate acted without evidence or alternatively, acted on a view of the facts which could not reasonably be entertained, and therefore, committed an error of law: see *Britco Structures Ltd.*, BC EST #D260/03.
14. Accordingly, I allow the appeal of LRSI, and find that it is not an associated employer of Louis Russo Sawmills (1998) Limited or M. & L. Wood Preservers Ltd. under s. 95 of the *Act*. Louis Russo Sawmills (1998) Limited or M. & L. Wood Preservers Ltd. are the only companies liable for the amounts ordered to be paid in the Determination. Since Antonio Russo and Robert L. Russo are not directors or officers of those companies, and the Determination was only delivered to them in their capacity as directors and officers of LRSI, they cannot be liable under the Determination.

ORDER

15. I order, pursuant to s. 115 of the *Act*, that the Determination be varied to remove Louis Russo Sawmills Inc. as a party, and to provide that Louis Russo Sawmills Inc. is not an associated employer of Louis Russo Sawmills (1998) Limited or M. & L. Wood Preservers Ltd. under the Determination.

Matthew Westphal
Member
Employment Standards Tribunal