

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Number 7 Enterprises Ltd.
("Number 7")
and
Daniel Jean LaPointe
("LaPointe")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/332

DATE OF DECISION: July 15, 1996

DECISION

OVERVIEW

This is an appeal by Number 7 Enterprises Ltd. (“Number 7”), and by Daniel Jean LaPointe (“LaPointe”), pursuant to Section 112 of the *Employment Standards Act* (“Act”). Number 7 appeals Determination No. CDET 002204 and LaPointe appeals Determination No. DDET 000254, both of which were issued by a delegate of the Director of Employment Standards on May 10, 1996. Both Determinations imposed a penalty of \$500.00 under Section 98 of the *Act* and Section 28 of the *Regulation*. Another Determination (No. DDET 000255) was also issued on the same date in the name of Irene Mary Jubinville (“Jubinville”).

I have reviewed the written submissions made by LaPointe on his own behalf and on behalf of Number 7 as well as the written submissions made to the Tribunal by the Director’s delegate.

FACTS

The issue involved in each of the Determinations is Number 7’s failure to provide payroll records pertaining to Barbara Benner. The Reason Schedule attached to the Determination sets out, in detail, the reasons why the Director’s delegate imposed a penalty on Number 7, LaPointe and Jubinville.

LaPointe and Jubinville are shown on the Determinations as directors/officers of Number 7.

Jubinville did not appeal Determination No. DDET 000255. Correspondence sent by the Tribunal to Jubinville was returned unopened by LaPointe with the following information:

“Not an officer. Not a director. Number 7 Enterprises sold to Daniel Jean LaPointe as of February 1, 1995. Direct your mail to Daniel Jean LaPointe”

The reasons given by LaPointe for his appeal and that of Number 7 are:

“Employee on signed contract. Also I have left messages at your office in Victoria to call; nobody has. Company sold. All records...moved.”

On June 17, 1996 the Tribunal provided Number 7, LaPointe and Jubinville with copies of all documents submitted by the Director’s delegate to the Tribunal and requested a reply before July 8, 1996. LaPointe’s reply was received on July 8, 1996.

LaPointe's reply states, in part:

"The company was sold on February 1, 1996. When files were picked up, were moved to garage for storage. Parties moved. Records no longer exist."

ANALYSIS

LaPointe has not provided any new information which contradicts the information set out in the Determinations except to inform the Tribunal that Jubinville is no longer a director or officer of Number 7.

Section 28 of the *Act* requires employers to keep payroll records at the employer's place of business for 7 years after employment terminates. Barbara Benner's employment with Number 7 terminated on February 1, 1996.

The appeals do not challenge any of the substantive facts and reasons that are set out in the Determinations.

Section 114 (1)(c) of the *Act* allows the Tribunal to dismiss an appeal if it is satisfied that the appeal is "...frivolous, vexatious or trivial or is not brought in good faith." Following my consideration of this appeal I have concluded that it falls within the criteria set out in Section 114.

I have received no documentary evidence to establish that Jubinville is not a director/officer of Number 7.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination NO. CDET 002204, Determination No. DDET 000254 and Determination No. DDET 000255 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sr