

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 -

M.T. Amateur Sports Publications Ltd., M.T. Cultural Publications Ltd.,
Calvary Publishing Corp., and Glen Patrick Robbins
operating as Aurora - M.T. Publications

(the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 97/75

DATE OF DECISION: April 25, 1997

DECISION

SUBMISSIONS

Mr. Glen P. Robbins	for the Employer
Ms. Lynn L. Egan	for the Director

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) of Determination Letter dated January 31, 1997. The Director’s Delegate found that the Employer owed the Complainant \$941.41 in wages (commissions and vacation pay) and interest.

ISSUE TO BE DECIDED

The Employer argues that the Delegate erred in properly assessing the evidence before her. The Employer also questions the process used in arriving at the Determination.

FACTS

The Complainant was employed “to sell advertising for various publications published by several enterprises known as “The Tannis Group of Companies”(p.2). She was paid 10% of the amount of her sales. In August 1996, the organization was taken over by Calvary Publishing Corp. Calvary subsequently terminated the Complainant’s employment.

The Determination notes that the Employer’s representative was unable to provide records of sales made, records of commissions paid and records of sales’ cancellations pertaining to the Complainant’s work. The Complainant provided this information and it was used in making the Determination that she was owed \$919.58 plus interest.

ANALYSIS

I begin by noting that the Employer filed its appeal of the Determination on February 6, 1997. On February 18, 1997 the Director filed her reply to the appeal. On February 27, 1997 the Registrar of the Tribunal sent the Employer the Director’s submission. The Employer was given until March 20, 1997 to reply. The Employer did not make a submission.

The Director's February 18 submission was an extensive review of the appeal. It provided all of the information used in making the Determination. It reviewed the information requested from the Employer during the investigation and the information that was not made available. The Employer's failure to reply to the Director's submission leaves virtually all of the Director's reply unchallenged.

I turn now to the Employer's February 6 appeal submission.

First, the Employer says that on March 1, 1996 the Complainant and other employees were put on contractor status. The Employer argues that, therefore, vacation pay was not owed to the Complainant after March 1, 1996. The *Act* defines the scope of employee status. Numerous decisions of the Tribunal have reviewed the distinction between employee and contractor. The *Act* does not permit an employer to change a person's status from an employee to contractor when the employment relationship remains that of an employee. The Employer's appeal provides no rationale in stating that after March 1, 1996 the sales people were no longer employees.

Second, the Employer takes issue with the Delegate's reliance on the Complainant's information and the Delegate's assertion that the Employer was unwilling or unable to provide requested information. The Director's submission sets out all of the information requested from the Employer but not received. The submission sets out the information relied upon by the Delegate in making her Determination. The rationale of the Determination is explained. The Director's submission was unchallenged by the Employer.

Third, the Employer takes issue with the process that led to the Determination. The Employer submission also appears to address the appeal process. It reads: "Under administrative law the appellant is entitled to a fair hearing and a complete review of all of the evidence from both parties." The Employer filed a very brief statement of appeal. The Tribunal might well have asked the Employer to provide more specific details before its appeal would be adjudicated. Its appeal was permitted to proceed, however, and the Director was asked to respond. As noted above, the Director responded with a complete review of the case and the Employer made no reply. With respect, the Employer's appeal was given a fair hearing.

Finally, Glen Robbins takes issue with the inclusion of Calvary Publishing Corp. and Glen Patrick Robbins operating as Aurora-M.T. Publications in the Determination's orders. He does not say why. Sections 95 and 96 set out the scope of liability under the *Act* for associated companies and corporate officers. Relevant sections read:

95. *If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,*

(a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and

(b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

96. *(1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.*

The Complainant worked for the Tannis Group of Companies. The Employer does not dispute that Tannis was taken over by Calvary Publishing Corp. The Delegate found that the Complainant received commissions from Calvary Publishing Corp. on a bank account in the name of Aurora - M.T. Publications. Glen Robbins was an officer of both companies. There is no basis to find the Determination was incorrect.

ORDER

Pursuant to Section 115 of the *Employment Standards Act*, Determination Letter dated January 31, 1997 is confirmed.

Richard S. Longpre
Adjudicator
Employment Standards Tribunal