

An appeal

- by -

Triple S Transmissions Inc. operating as Superior Transmissions
(“Triple S”)

- 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: M. Gwendolynne Taylor

FILE No.: 2002/051

DATE OF DECISION: May 8, 2002

DECISION

OVERVIEW

This is an appeal pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) by Triple S. Transmissions Inc. operating as Superior Transmissions (“Triple S”), of a Determination issued by the Director of Employment Standards (the “Director”) on January 23, 2002. The Determination arose out of a complaint filed by Brad Stout (“Stout”), a former employee. The Director concluded that Triple S had contravened sections 17(1), 18(2), 21(1) and 58(3) of the *Act* by failing to pay wages and vacation pay as required. The Director ordered Triple S to pay \$593.16 including interest; Triple S had issued a cheque in the amount of \$598.87 which is being held by the Director in trust.

Triple S appealed on the grounds that Stout was a contractor, not an employee, which is a position it had not advanced before the Director.

ISSUE

Is Triple S entitled to introduce evidence in appeal that it failed to provide to the Director?

THE FACTS

Stout filed a complaint with the Director for payment of regular salary and vacation pay for his employment with Triple S from May 15, 2001 to June 21, 2001. Triple S submitted to the Director that Stout had not fulfilled his employment obligation and left his employment without notice or reason. Triple S alleged that Stout took with him equipment that he had sold to Triple S and owed Triple S money in excess of outstanding wages. Triple S issued a cheque to be held in trust by the Director.

The Director noted the other issues raised by Triple S are not within the authority of the *Employment Standards Act*. The Director found that Triple S owed regular wages, vacation pay and interest, in the total amount of \$593.16.

Triple S appealed the Determination and provided a statement explaining the original agreement with Stout was for purchase and installation of equipment and training of employees. During that time, he was on a contract. By error, he was entered as an employee on the computer system. Triple S submitted that he should never have been treated as an employee, he did not meet the contract expectations, and he removed equipment when he left.

In reply to the appeal, Stout submitted that there was never an agreement for him to work on a contract basis.

ARGUMENT

The Director submitted that Triple S had not raised the issue of contractor versus employee during the Director’s investigation and, therefore, should not be permitted to do so in the appeal. The appeal should

be decided on the information given during the investigation. The Director referred to the Tribunal's decision BC EST # D268/96 in which the adjudicator stated:

An appeal under Section 112 of the *Act* is not a complete re-examination of the complaint. It is an appeal of a decision already made for the purpose of determining whether that decision was correct in the context of the facts and the statutory provisions and policies. The Tribunal will not necessarily foreclose any party to an appeal from bringing forward evidence in support of their case, but we will not allow the appeal procedure to be used to make the case that should have and could have been given to the delegate in the investigative process.

REASONS

I concur with the Director that it is not now open to Triple S to present evidence that Stout was not an employee. An appeal under section 112 is not intended to be a complete re-hearing of a complaint. It is intended to provide an opportunity for a party to demonstrate that the Director made an error in the facts or the law.

Triple S asks that the Determination be set aside. I am not prepared to accede to that request. Triple S did not suggest that the Director's calculations were incorrect. The Director did not err in basing the Determination on the evidence presented during the investigation.

ORDER

The appeal is dismissed and the Determination is confirmed.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal