

An appeal

- by -

Daren Sevenko
("Sevenko")

- 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: April Katz

FILE No.: 2001/824

DATE OF DECISION: May 8, 2002

DECISION

OVERVIEW

Daren Sevenko, “Sevenko” filed a complaint claiming unpaid wages from Above and Beyond Technologies Inc. (“Above and Beyond”). The Determination was issued on January 16, 2001 and concluded that the Delegate did not have enough evidence to conclude that any wages were owed. Sevenko appealed the Determination. After the hearing the matter was referred back to the Director to complete the investigation.

The Director’s Delegate submitted a new Determination on November 19, 2001, which found that Above and Beyond had principals who are Randy Rochefort, Gerald Hartwig and Gray Knight but did not draw any conclusions about their liability to Sevenko.

ISSUE

Did the Director of Employment Standards (“Director”) err in failing to find that Above and Beyond owes Sevenko wages?

ARGUMENT

Sevenko argues that he was hired by one company and paid by two others. When he was not paid he went to Gerald Hartwig who arranged to pay him through Tour Cascadia or paid him in cash. Sevenko argues he relied on Gerald Hartwig to stand behind the company and make sure he was paid. Sevenko’s cheques from Tour Cascadia were dishonoured at the bank. Sevenko wants Gerald Hartwig or one of the companies should pay him the \$5200 he earned between May and July 2000.

Above and Beyond made no submissions.

THE FACTS AND ANALYSIS

In an appeal the evidentiary burden is on the appellant to show that the Director’s Determination was in error. The Determination found that there was insufficient evidence to find that wages were owed. Sevenko demonstrated that he had received paycheques from various sources during his employment. The relationship between the sources was unclear and this issue was referred back to the Director for further investigation.

From the evidence at the original hearing I concluded that Sevenko received a pay cheque from Above and Beyond of \$1000, which was dishonoured and a pay cheque from Randy Rochefort, the CEO of Tour Cascadia for \$600, which was dishonoured.

Both Tour Cascadia and Above and Beyond were run in part by Gerald Hartwig who directed Sevenko’s work assignments on a day to day basis. Sevenko was sent to trade shows with identification on behalf of Above and Beyond. When he returned, he reported back to Gerald Hartwig.

The new Determination concludes that the companies that paid or represented themselves as paying Sevenko were all associated companies of Above and Beyond and that the principals are Randy Rochefort, Gerald Hartwig and Gray Knight.

The evidence of the cheques and work product produced by Sevenko demonstrate that he was employed by Above and Beyond. I find that the evidence supports Sevenko's claim for \$5200 in wages.

CONCLUSION

Based on my findings of fact I vary the Determination dated January 16, 2001 and order Randy Rochefort, Gerald Hartwig and Gray Knight and Above and Beyond Technologies to pay Daren Sevenko \$5,200.00 for unpaid wages plus any additional interest due from the date of the Determination under Section 88 of the *Act*.

ORDER

Pursuant to section 115 (1)(b) the appeal is allowed and the Determination dated January 16, 2001 is varied. I order Randy Rochefort, Gerald Hartwig and Gray Knight and Above and Beyond Technologies to pay Daren Sevenko \$5200 for unpaid wages plus any additional interest due from the date of the Determination under Section 88 of the *Act*.

April Katz
Adjudicator
Employment Standards Tribunal