

An appeal

- by -

Ceridian Canada Ltd.
("Ceridian")

- 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: David B. Stevenson

FILE No.: 2002/047

DATE OF DECISION: May 9, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Ceridian Canada Ltd. (“Ceridian”) of a decision of the Director of Employment Standards (the “Director”) dated January 10, 2002 (the “Determination”). The Determination concluded that there was no contravention of the *Act*, ceased investigating the complaint and closed the file.

The Tribunal has decided an oral hearing is not necessary in order to address this appeal.

ISSUE

The issue in this appeal is whether Ceridian has shown the Determination was wrong in a manner that justifies the intervention of the Tribunal under Section 115 of the *Act* to cancel the Determination and to refer it back to the Director to continue and complete the investigation. The appeal raises a question of law about the interpretation and application of the *Act* to a claim by one business against another business for recovery of wages paid by the former to the employees of the latter. Ceridian also raises a fair hearing issue.

FACTS

Ceridian is in the payroll calculation and payment business. Using information provided by its clients, Ceridian calculates gross and net wages for employees of those clients and makes payment on behalf of the client to the appropriate recipients, including the clients’ employees. Ceridian made such payments on behalf of three of its clients, Holista Health Corporation, Modern Groove Entertainment Inc., and Viacom Holdings (1985) Ltd. (collectively the “Employers”), who subsequently failed to pay Ceridian the amounts advanced on their behalf. The following findings of fact were made by the Director:

- Ceridian and the Employers were in a business relationship whereby Ceridian provided payroll and payment services to the Employers;
- Ceridian paid the Employers’ employees wages;
- Ceridian cannot recover the money paid to the Employers’ employees from the Employers;
- Ceridian would like to recover the money paid to the employers’ employees from the Employers’ directors and officers (section 96).

The Determination also noted that none of the employees of any of the Employers had filed a complaint under the *Act*.

The Director concluded the *Act* did not apply for three reasons: first, there was no employment relationship between Ceridian and the Employers and Ceridian could not be owed wages under the *Act*; second, there was otherwise no unpaid wages; and third, the *Act* was not intended to be utilized as a

general collection vehicle for debts between two businesses even where the debt between those businesses can be traced to wages paid to the employees of the debtor business.

ARGUMENT AND ANALYSIS

I will first address the fair hearing issue. Ceridian says there was a denial of fair hearing by the Director because it did not receive, and therefore had no opportunity to reply, to a written submission made by counsel for the directors and officers of one of the Employers. In reply, the Director does not dispute that Ceridian was not provided with the written submission, but says it was not circulated because that submission did not influence the decision and was not given any consideration in reaching the decision. In response to the Director, counsel for Ceridian says it is important to the integrity of the process that a party be allowed to reply to submissions or allegations made by another party.

No denial of fair hearing has been shown and this ground of appeal is dismissed. The written submission at issue was not considered by the Director in making the decision to cease investigating. In any event, it was premature to suggest that Ceridian should have been given that submission. It was not filed by a party to the proceeding, but by directors and officers of one of the Employers as ‘interested third parties’ (presumably on the basis that their individual rights could be adversely affected by a decision of the Director to accept the claim filed by Ceridian). The matter of their standing on the claim did not need to be decided as the Determination was issued two days after the submission was received. Had the Director continued to investigate, it would have been necessary to decide the matter of standing and at that point Ceridian would have a right to receive the submission and to reply to both the question of standing and to any substantive matters raised in it, but no such right arose because of the decision by the Director to cease investigating.

On the other issue raised by the appeal, Counsel for Ceridian argues that the conclusion of the Director to deny Ceridian access to the remedial provisions of the *Act* is an error of law. Counsel says that the Director placed too narrow an interpretation on the *Act* and failed to give the proper effect to the statutory purpose of ensuring that employers comply with, or meet, their obligations under the *Act*.

I agree with and accept the view of the Director that the essential character of the claim raised by Ceridian is not the recovery of wages but a simple debt action between two businesses and the *Act* is not intended to apply to such matters. I also agree with the submission of counsel for Holista Health Corporation, one of the Employers, that the *Act* is concerned with the relationships between an employer and its employees, and does not concern itself with private contractual relationships between two independent businesses unless those arrangements are caught by the prohibition found in Section 4 of the *Act*.

Fundamentally, this appeal is decided on the facts. Ceridian does not contest what I believe are the two key findings of fact made by the Director: first, that Ceridian is not an employee of the Employers; and second, there are no wages owed to the employees of the Employers and no contest between the Employers and their employees. Ceridian’s argument founders on those findings of fact when they are considered against the central statutory obligation placed on employers in the legislation, which is to ensure, in relation to the work being performed, that their employees receive the basic compensation and standards set out in the *Act*.

Even accepting Ceridian’s argument that an ancillary purpose is to ensure the Employers comply with their obligations under the *Act*, on the facts of this case the Employers have done so. The Director

concluded that the source from which the Employers satisfied their obligations under the Act had no legal relevance to whether the *Act* had been contravened and I also agree with that conclusion.

Like the Director, I do not accept that the legislature intended to allow a general creditor access to the legislation's remedial provisions to collect a commercial debt, even if that creditor could show the money comprising the debt was used to meet an employer's obligations under the Act. Counsel for Ceridian says the wages of the Employers' employees were paid by Ceridian and not by the Employers. She says that the Employers have not met their obligations under the Act and that continuing contravention justifies a remedy. My difficulty in accepting that proposition is grounded in the fact that Ceridian was, at all material times, acting on behalf of the Employers when paying the Employers' employees the wages to which they were entitled. Paragraph 4 of the Payroll Services Agreement says, in part:

4. The Employer hereby grants to Ceridian Canada the authority to issue the Payments on *behalf of the Employer . . .*

(emphasis added)

This ground of appeal must also be dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated January 10, 2002 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal