

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Nova Express Inc.
("Nova Express")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/034

DATE OF DECISION: May 15, 2000

DECISION

OVERVIEW

I have before me an appeal, filed on January 21st, 2000, by Nova Express Inc. (“Nova Express”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) of a determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 29th, 1999 under file number ER 17594 (the “Determination”).

The Director’s delegate determined that Nova Express [or, more particularly, its predecessor company, Dwarf Courier (1993) Ltd.] fell under provincial jurisdiction and that one Keith M. Eremko (“Eremko”) was an employee, rather than an independent contractor, of Nova Express. The delegate awarded Mr. Eremko the sum of \$7,985.09 on account of unpaid statutory holiday pay, vacation pay, unauthorized payroll deductions and uniform costs.

This appeal was filed on behalf of Nova Express by its legal counsel. The reasons for appealing the Determination include, *inter alia*, that the delegate erred in finding that Eremko was an employee and that the delegate did not conduct a procedurally fair and impartial investigation of the matter.

However, on February 7th, 2000, Nova Express made an assignment into bankruptcy. Thus, although this appeal was properly before the Tribunal as of January 21st, 2000, once Nova Express made an assignment into bankruptcy, the “stay” provisions contained in the federal *Bankruptcy and Insolvency Act* were triggered. As and from February 7th, 2000 this appeal could only be continued by its licenced trustee-in-bankruptcy, Arthur Anderson Inc. (see *Fyfe and Canadian Neon Ltd.*, BC EST #D080/00 and *Centrux Management Ltd.*, BC EST #D091/00).

In a letter dated March 6th, 2000 from the Director’s delegate to Arthur Anderson Inc. (which was copied to the Tribunal), the delegate confirms the trustee’s position that it does not intend to pursue this appeal. In effect, the trustee’s position appears to be that it wishes to withdraw the appeal.

In a letter submitted to the Tribunal and dated March 17th, 2000, legal counsel for Nova Express’ former sole officer and director takes the following position:

“...While the Trustee of Nova Express Inc. had expressed no interest in continuing with the Appeal, Jack Ramnauth does have an interest in the Appeal continuing. To that end, Jack Ramnauth has authorized me to state that he adopts the Appeal as filed by Nova Express Inc. in the above captioned matter. He adopts all of the defences and positions set out therein. Jack Ramnauth wishes to continue with the Appeal in order to prosecute the Appeal on the merits in order to preserve his position for any potential proceeding under Section 96 that may subsequently be commenced.”

There are two principal problems with counsel’s position. First, in light of the bankruptcy of Nova Express, the right to continue the appeal now lies solely with the Nova Express’ Trustee.

As noted above, the Trustee does not wish to pursue the appeal. Second, and quite apart from the bankruptcy of Nova Express, Ramnauth (whom I understand was Nova Express' sole officer and director) resigned both his office and his directorship with Nova Express on January 21st, 2000. Accordingly, Mr. Ramnauth is no longer in a position to act on behalf of Nova Express with respect to this appeal. There is no evidence before me that he has been appointed by the Trustee as an authorized agent to pursue the appeal. Any liability that may be imposed on Mr. Ramnauth by way of a section 96 determination will have to be addressed through an appeal by Mr. Ramnauth of such a determination should the Director choose to proceed against Mr. Ranmauth under section 96 of the *Act*.

ORDER

This appeal is dismissed as abandoned. Pursuant to section 115 of the *Act*, the Determination is confirmed as issued.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal