

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 D. Katz

FILE No.: 2001/136

DATE OF HEARING: May 1, 2001

DATE OF DECISION: May 14, 2001



DECISION

APPEARANCES:

Daren Sevenko	on his own behalf
Karyn Luttmer	on behalf of the Director

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 is appealing the Determination.

ISSUE

Did the Director of Employment Standards (“Director”) err in concluding there was insufficient evidence to support a finding that wages were owed?

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 facts provided in this matter are not in dispute. Sevenko told the Delegate that he 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 companies were run in part by Gerald Hartwig who directed Sevenko’s projects. Sevenko was sent to trade shows by Above and Beyond and he reported back to Gerald Hartwig.



There is no evidence in the Determination about how the operations of the 3 potential sources of Sevenko's income, Tour Cascadia, Above and Beyond and Gerald Hartwig are or are not associated.

There is clear evidence of Sevenko's association with Above and Beyond and no evidence that he was paid. The conclusion that there was insufficient evidence to support the complaint seems premature. Sevenko's access to the employer's bank records and pay roll records was severely restricted. The principals of the employer need to be asked for specific information.

CONCLUSION

Based on the evidence presented I find that the Delegate's investigation is incomplete. I cannot draw any conclusions on the evidence before me and refer the matter back to the Delegate to determine the relationship of the principals of the employer and who the employer was. I allow the appeal and refer the matter back to the Director for further investigation.

ORDER

Pursuant to section 115 (1)(b) the appeal is allowed and the Determination dated January 16, 2001 is referred back to the Director.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal