

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 -

Belair Bay Industries Ltd.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/142

DATE OF HEARING: May 26, 1997

DATE OF DECISION: June 5, 1997

DECISION

APPEARANCES

Jennifer Zahar	on her own behalf
Murray Superle	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by Belair Bay Industries Ltd., under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated February 14, 1997 which was made by a delegate of the Director of Employment Standards (the “Director”).

The Determination requires Belair Bay Industries Ltd. to pay wages, statutory holiday pay, vacation pay and interest totalling \$1,282.02 to a former employee, Jennifer Zahar.

Shirley Ann Patten submitted an appeal on behalf of Belair Bay Industries Ltd. in which she sets out that Belair Bay Industries Ltd. has no business relationship with BBI Industries and requested that a hearing be scheduled by the Tribunal.

A hearing was scheduled for May 26, 1997 and a Notice of Hearing to that effect was sent to interested parties on May 2, 1997. Ms. Patten notified the Tribunal by facsimile on May 12, 1997 that she would be unable to attend the hearing and relied on her written submissions dated March 7, 1997 and April 21, 1997.

ISSUES TO BE DECIDED

Was Jennifer Zahar an employee of Belair Bay Industries Ltd.?

Is Jennifer Zahar entitled to receive the wage amounts and interest set out in the Determination?

FACTS

The Director’s delegate determined that Jennifer F. Zahar was employed by Belair Bay Industries Ltd. from July 4, 1995 to October 6, 1995.

The Determination contains the following reasons by which the Director’s delegate decided that Belair Bay Industries Ltd. contravened the *Act* and is required to pay wages to Ms. Zahar:

- The investigation revealed that Gerry Roedde, operating as BBI Industries, was sent correspondence identifying that a complaint had

been made for certain wages, and demanding that payroll records be provided. The Officer received a telephone call from the company's accountant, who indicated that the employer considered the complainant a contractor. The Officer did not receive any pay records in response to the demands for same.

- The complainant was interviewed and provided information that indicated that there was an employee-employer relationship. In addition, the complainant provided a statement indicating the hours worked and non-payment. This statement and/or record was used by the Officer in the Calculation Schedule. A Determination was issued to Gerry Roedde, operating as BBI Industries, on March 29, 1996.
- Subsequent to this, a copy of a Bill of Sale dated December 31, 1994 was provided to the Officer. It indicated that the assets of "Gerry Roedde, doing business as BBI Industries" were sold to "Shirley Ann Patten."
- Shirley Ann Patten is listed as the President/Secretary of Belair Bay Industries Ltd.
- The Officer is satisfied that the above named business, trades, or undertakings are associated pursuant to Section 95 of the *Employment Standards Act*.

In her written submission dated April 21, 1997, Ms. Patten provided copies of various certificates which were issued by the Registrar of Companies under the *Company Act*. These certificates show the following:

- C.A. Duffield Traders Inc. was officially incorporated under the *Company Act* on April 20, 1989.
- C.A. Duffield Traders Inc. officially changed its name to 364053 B.C. Ltd. on May 30, 1989.
- 364053 B.C. Ltd. officially changed its name to BBI Industries Ltd. on September 17, 1996.
- BBI Industries Ltd. officially changed its name to Belair Bay Industries Ltd. on October 30, 1996.

Ms. Patten's submissions explained that the reason for the change in name from BBI Industries Ltd. to Belair Bay Industries Ltd. was to avoid confusion between BBI Industries Ltd. and the proprietorship (Gerry Roedde, operating as BBI Industries).

Ms. Patten's submissions make no reference to the Bill of Sale (dated December 31, 1994) in which she purchased "...the goods, personal chattels and personal property..." from Gerry Roedde doing business as BBI Industries.

At the hearing, the Director's delegate provided the Tribunal with a copy of a "Register of Directors" (under Section 140 of the *Company Act*) which shows that Gerry Alan Roedde ceased to be the sole director of 364053 B.C. Ltd. on April 21, 1995 and that Shirley Patten was appointed as the sole director of 364053 B.C. Ltd. on that same date.

ANALYSIS

The central point of this appeal is set out in Ms. Patten's written submission of April 21, 1997 in which she states that "...Jennifer Zahar was never employed by me, as my company did not exist until September 17, 1996, I cannot possibly produce her employment records." Ms. Patten also submits:

"If Jennifer Zahar truly has a complaint, it is with the proprietorship of Gerry Roedde, and not with the limited company of myself" (sic)

I cannot accept these submission as grounds to vary or cancel the Determination. The Bill of Sale dated December 31, 1994 was not refuted by Ms. Patten. It shows that she purchased the "chattels" from Gerry Roedde doing business as BBI Industries. Ms. Patten was the President and Secretary of 364053 B.C. Ltd., effective April 21, 1995. The official changes of name from 364053 B.C. Ltd. to BBI Industries Ltd. (effective September 17, 1996) and subsequently to Belair Bay Industries Ltd. (effective October 30, 1996) do not alter or forgive any liabilities incurred by the corporate entity prior to the changes of name.

ORDER

I order, under Section 115 of the *Act*, that the Determination by confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

gc/da