Employment Standards TRIBUNAL

An appeal

- by -

Mission & District Bingo Association
(the “Employer”)

- 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: Ib S. Petersen

FILE No.: 2001/154

DATE OF HEARING: May 7, 2001

DATE OF DECISION: May 16, 2001

DECISION

APPEARANCES:

Mr. Francis Edwards	on behalf of MBA
Ms. Donna-Marie Thrustle	on behalf of herself

OVERVIEW

This is an appeal by Mission & District Bingo Association ("MBA") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*"), against a Determination of the Director of Employment Standards (the "Director") issued on January 25, 2001 against the Employer, Mission & District Bingo Association. The Determination against the Employer concluded that the Employer terminated Donna-Marie Thrustle ("Thrustle" or the "Employee") without just cause and that she, in the result, was owed an amount on account of compensation for length of service. The delegate disagreed that Thrustle was an independent contractor. As well, the delegate held in the Employer's favour with respect to a claim for minimum wages, statutory holiday pay and vacation pay.

FACTS

The relevant facts are as follows:

1. Thrustle worked for the Employer, until her termination by letter dated June 6, 2000. She worked pursuant to a number of written "independent contractor" agreements between herself and Mission & District Bingo Association. These agreements provided that she would provide, respectively, "caller" and "floor walker" services to the Employer. As mentioned, the delegate rejected the argument that she was not an employee. These agreements appear to be dated between 1997 and 2000.

2. The delegate found that Thrustle commenced her employment in August 1993. Thrustle explained at the hearing that was when she commenced her employment. There was no dispute that Thrustle had commenced providing services prior to 1996-97, but MBA explained--and this was not seriously disputed--that Thrustle between 1993 and 1996-97, provided services and was paid by individual charities which between 1993 and 1996 organized events under the umbrella of the Employer.

3. The Employer was apparently registered as a society but it was struck from the register between 1993 and 1996 for failing to file annual returns etc. There is no doubt, however, that the Employer continued to operate: it operated bank accounts, paid the individuals who

provided the services, including Thrustle, and was a signatory to the "independent contractor" agreements with Thrustle.

4. MBA explained that it was established as a society in April 2000 as the umbrella association for the charities that had operated under the Employer. There was no documentation before me to support this claim. There was, as well, no explanation why, if that was the case, the letter, dated June 6, 2000, purporting to terminate Thrustle's agreement was headed Mission & District Bingo Association and was signed on behalf of that association by three of its "directors."

5. It appears that the Determination was properly served by registered mail on the Employer, at this address "Mission & District Bingo Association, P.O.Box 3424, Stn.Main, Mission, B.C. V2V 1G5, the same address used for communication between the delegate and the Employer and, as well, the address stated on the termination letter. Incidentally, this is the same address as MBA's. It would appear that there is substantial overlap between the two associations in terms of the charities and persons involved.

ANALYSIS

First, does MBA have standing to bring the appeal? In my view, that association does not have standing to bring the appeal. It does not appear that MBA is an authorized agent of the Employer. In fact, MBA maintains that it is separate and distinct from the Employer, which it says "ceased to exist in 1996." In short, there is, in my view, no appeal properly before the Tribunal.

On that note, I do not accept that the Employer ceased to exist in or around 1996. It may have been struck from the register of societies. However, the Employer carried on business. As mentioned above, it operated bank accounts, paid the individuals who provided the services, including Thrustle, and was a signatory to the "independent contractor" agreements with Thrustle. As well, it purported to terminate Thrustle's employment in June of 2000. *The Society Act* provides that Part 9 of the *Company Act* generally applies to societies that have been struck. Section 260 of the *Company Act* provides that the liability of directors, officers and members of a society continue as if it had not been struck. In my view, it would appear, therefore, that the liability in the instant case would rest with the directors, officers and members of the Employer.

Second, even if I am wrong with respect to the foregoing, a hearing was held on May 7, 2001. The, the appellant in this matter, has the burden to prove the Determination wrong. The Employer did not appear at the hearing. The hearing notice was sent to the address of the Employer. Edwards, who appeared for MBA, did not have authority to speak for the Employer. In the result, if there was an appeal properly before me, I consider that the appeal has been abandoned and dismiss it.

Third, even if I am wrong with respect to these conclusions, I would, nevertheless, still dismiss the appeal. There were a number issues arising out of the appeal: independent contractor status versus employee status, start of employment, hours worked etc. MBA failed to show that the findings of the delegate were wrong. Essentially, MBA's position was that the delegate's findings were exaggerated and inflated but it was unable to provide any specific information to support its case. MBA also took issue with Thrustle's start date, which she had indicated to the delegate as being 1993. In the circumstances, the delegate might well have concluded that there was a continuing employment relationship. As well, MBA says that the delegate failed to consult it with respect to his investigation. On the evidence provided at the hearing, there was nothing to substantiate this.

In the result, I uphold the Determination.

ORDER

Pursuant to Section 115 of the Act, I order that Determination in this matter, dated January 25, 2001, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal