

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 -

Coker Equipment Inc.
("Coker Equipment")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/041

DATE OF HEARING: June 16, 2000

DATE OF DECISION: June 28, 2000

DECISION

APPEARANCES

Stanley I. Coker, President	for Coker Equipment Inc.
Tim Prescott, Barrister & Solicitor	for Coker Equipment Northwest Ltd.
Henry Sienema	on his own behalf
No appearance	for the Director of Employment Standards

OVERVIEW

This is an appeal brought by Coker Equipment Inc. (“Coker Equipment”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on January 10th, 2000 under file number ER 95-223 (the “Determination”).

This appeal—together with a separate appeal by Coker Equipment Northwest Ltd. of the same Determination (see EST File No. 2000/047)—was heard at the Tribunal’s offices in Vancouver on June 16th, 2000. Mr. Stanley I. Coker, the president of Coker Equipment Inc., appeared via teleconference on the appellant’s behalf. Coker Equipment Northwest Ltd. was represented by Mr. Tim Prescott, Barrister and Solicitor, and the respondent employee, Mr. Sienema (“Sienema”), appeared on his own behalf. The Director’s delegate had previously advised the Tribunal that she did not intend to attend the appeal hearing.

THE DETERMINATION

The Director’s delegate determined that Coker Equipment Inc. and Coker Northwest were “associated corporations” as defined by section 95 of the *Act* and, accordingly, were jointly and separately liable for \$2,221.50 in unpaid wages and interest owed to a former Coker Equipment Inc. employee, Henry Sienema (“Sienema”).

ISSUE ON APPEAL

In a decision issued concurrently with these reasons (*Coker Equipment Northwest Ltd.*, BC EST #D247/00), I varied the Determination by expunging the section 95 declaration that Coker Equipment Northwest Ltd. and Coker Equipment Inc. were “associated corporations”.

Accordingly, Coker Equipment Northwest Ltd. is not liable for any unpaid wages that may be due to Sienema. These reasons thus address only the correctness of the Determination as it relates to Sienema’s unpaid wage claim as against Coker Equipment Inc.

Mr. Prescott, for Coker Equipment Northwest Ltd., does not take any issue with the award in favour of Sienema as against Coker Equipment Inc.—as noted above, his only concern was the section 95 declaration.

I should add that Coker Equipment, in its appeal documents, also asserted that Sienema was an “independent contractor” rather than an “employee” and, thus, not entitled to file a claim under the *Act*. This latter issue was not pressed by Mr. Coker at the appeal hearing and, in any event, the evidence before me clearly shows that despite the apparent *form* of the relationship, Sienema was a Coker Equipment employee as defined by section 1 of the *Act*.

FACTS AND ANALYSIS

I should perhaps commence my analysis by observing that in an appeal to the Tribunal, it is the appellant’s burden of showing that the Determination is incorrect either as to factual or legal conclusions. Coker Equipment has simply failed, in this appeal, to meet its burden of showing any such error.

There are three components to the award made in favour of Sienema: wages earned from March 1st to 8th, 1999, 4% vacation pay, and interest. With respect to the wages for the first week in March, 1999, Mr. Coker was not in a position to contradict Sienema’s evidence that he did, in fact, work for Coker Equipment (in B.C.) during this latter period. Indeed, Mr. Coker’s evidence was that Sienema “may” have worked during this period.

As for the vacation pay component, Mr. Coker’s principal concern was that Sienema did take one week’s paid vacation during his employment. Sienema does not dispute this latter fact but, as I pointed out to Mr. Coker during the hearing, Sienema’s one week paid vacation time *was credited* in the Determination against Coker Equipment’s *statutory obligation* (which supersedes any written contract) to pay Sienema, upon the termination of his employment, 4% of total regular earnings as vacation pay [see section 58(3) of the *Act*].

Finally, interest was awarded in accordance with the dictates of section 88 of the *Act*.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be varied to the extent that the award of \$2,221.50 made in favour of Henry Sienema be confirmed *only as against Coker Equipment Inc.* Coker Equipment Northwest Ltd. is not liable for any of Sienema’s unpaid wages.

Further, Sienema is also entitled, as against Coker Equipment only, to whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of the issuance of the Determination.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal