



An appeal

- by -

John H. Munts, a Director or Officer of United Air Conditioning and
Refrigeration (1996) Ltd.

("Munts")

- 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.: 2001/170

DATE OF DECISION: May 23, 2001

DECISION

APPEARANCES:

| | |
|-----------------|---------------------------|
| John Munts | on his own behalf |
| David Hilderman | on his own behalf |
| Rene Peloquin | on behalf of the Director |

OVERVIEW

On February 25, 2001 John Munts, (“Munts”), appealed a Determination dated February 1, 2001 which found that he owed David Hilderman (“Hilderman”) \$2,587.50 in wages and interest in his capacity as a director or officer of United Air Conditioning and Refrigeration (1990) Ltd. (“United”). The Director of Employment Standards had made a Determination against United on January 8, 2001. United was given until January 31, 2001 to file an appeal. No appeal was filed.

On February 1, 2001 the Director’s Delegate issued the Determination under appeal against Munts under section 96 of the *Employment Standards Act* (“Act”) that as a director or officer of United Munts is personally liable to Hilderman for 2 months of unpaid wages.

This appeal proceeded on written submissions from the parties and the Director.

ISSUE

1. Did the Director err in concluding that Munts is a director or officer of United within the meaning of the *Act*?
2. Did the Director err in concluding that Hilderman was an employee within the meaning of the *Act*?

ARGUMENT

Munts states in his appeal that he was negligent in responding to the Delegates request for information. Munts argues that Hilderman was an independent contractor and not an employee. Munts does not dispute that he is a director or officer of United or that Hilderman is owed the money claimed.

Hilderman argues that while he was an independent contractor of United in 1997 he was an employee in 1999 and 2000. Hilderman closed his company, DH Mechanical in 1999 after he entered into an employment arrangement with United. United agreed to pay Hilderman \$25 per hour instead of on the basis of each job. He stopped submitting statements to United on a per job basis and kept a record of the hours worked. He received regular pay cheques until March 1999.

FACTS AND ANALYSIS

Munts does not dispute the Delegate's finding that Hilderman is owed \$2587.50. He asks Hilderman to be patient as an independent contractor with other creditors of Untied.

Munts filed the appeal using United's name although the appeal period for United to appeal had lapsed on January 31, 2001. United did not request an extension of time to appeal. The Notice of Right to Appeal was clear and the documents all attached to the Determination sent to three locations and received on January 11, 2001. The Delegate had notified Munts on December 21, 2000 and January 8, 2001 of the substantive finding and Munts' personal liability with the relevant time limits for further consideration.

After the Delegate notified Munts of his personal liability, Munts filed this appeal. There are two grounds on which I can consider a director's or officer's appeal. These grounds were set out in the submission from the Delegate. Munts has not submitted any evidence to support either ground of appeal. He has not denied that he was a director or officer at the relevant time or that the calculation is incorrect.

With no evidence of an error in the Determination I find I must deny the appeal.

If I had to consider the merits of an appeal from United, which I do not, I would conclude on the evidence before me that Hilderman was an employee and not an independent contractor during from 1999 to February 2000. The Director's Delegate applied the criteria of control, integration, economic reality and specific result and concluded that Hilderman was an employee and I would agree.

CONCLUSION

Based on the evidence before me I find that there is no evidence to support a conclusion that an error was made in the Determination. I deny the appeal and confirm the Determination.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated February 1, 2001 be confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal