

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 -

B.C. Interiors and Custom Design Inc.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 98/127

DATE OF HEARING: May 29, 1998

DATE OF DECISION: June 18, 1998

DECISION

APPEARANCES

B.C. Interiors and Custom Design Inc.
Peter Premont
Christine Iles, and her counsel S. Mansfield, Esq.
Ray Skakum
Luigi Parrota
Parm Hothi
Randy Hartley
Alex Hannig
Director's Delegate, H. Beauchesne

OVERVIEW

This is an appeal by B.C. Interiors and Custom Design Inc. (the "company") of a Determination for payment of wages. After an unsuccessful request for an adjournment the principal of the company indicated that the company did not dispute that 80 % of the money was owing to the employees. The Determination was confirmed as the company raised no grounds for the appeal.

ISSUE TO BE DECIDED

Are there any grounds for appeal?

FACTS

B.C. Interiors and Custom Design Inc. (the "company") carried on a renovation and construction business in the Greater Vancouver area between February and October of 1997. The Director received 17 complaints from former employees of the company concerning non-payment of wages, vacation pay and overtime, as well as non-payment for a truck rental that was paid by an employee.

On February 10, 1998 the Director's delegate determined that wages, overtime pay and vacation pay, and a truck rental debt incurred in the total amount of \$28,582.19 had not been paid to 16 former employees of B.C. Interiors and Custom Design Inc.. The Director's delegate made the Determination on the basis of pay stubs or information

supplied by the employees as the company refused or neglected to participate in the investigation.

As a procedural point there were three separate tribunal files that were set for hearing on the hearing date involving the Company (Tribunal File # 98/127), Ms. Iles a director of the company (Tribunal File # 98/136) and Mr. Premont, also a director of the company (Tribunal File # 98/128). All parties appearing agreed that I could conduct one hearing, and use the evidence adduced in making decisions on the three separate tribunal files. The decisions on each of the files were issued concurrently for the appellants: the company (D# 264/98) for Ms. Iles (D# 265/98) and for Mr. Premont (D# 263/98).

Adjournment Application:

At the outset of the hearing Mr. Premont, the president of the company made an application to adjourn the case for three weeks. The basis of the adjournment was that his counsel, Mr. Covell, could not be present as he was otherwise engaged. Mr. Premont also stated that the company records were with an accountant and were not available for him to use. He also stated that Revenue Canada had "half the books" for the company.

The Directors delegate and the employees present opposed the adjournment. The Director's delegate argued that the employees were owed money, and that the employer had not supplied information to the Director, and generally failed to participate in the investigation. Ms. Iles took no position on the adjournment.

I denied the adjournment request with brief oral reasons. In my view Mr. Premont attempted to mislead me concerning the whereabouts of his counsel or the company's counsel. It is clear from a letter filed with the Tribunal that Mr. Covell has withdrawn from the case. Counsel for Ms. Iles, Stephen Mansfield, confirmed this.

It is also clear from the file material that the company failed to participate in the investigation. The excuses advanced by the company's former counsel, Mr. Covell in a letter to the Tribunal dated April 16, 1992 were that the books were in a mess and that the accountant was busy with tax time, and that the accountant would deliver the books to the company at the end of April. Mr. Premont also said that he applied 4 months ago for bank statements and had not received them.

There is a duty on the employer under s. 28 of the *Act* to keep records. From the Determination it is apparent that requests for information were sent to the employer on August 22, 1997. A demand for records was made on September 25, 1997. Mr. Premont made arrangements to bring in the records on December 1, 1997. He did not do so, alleging that he had been unable to obtain information from the bank. A meeting was scheduled for December 22, 1997 which Mr. Premont failed to attend.

I do not accept that the employer has any reasonable excuse that would justify an adjournment of the hearing. The company has had ample opportunity to participate in the investigation. The company has had ample opportunity to collect his records. It is more

than 9 months since the investigation commenced. It is my view that a further adjournment would likely just result in a delay of this case, and further prejudice to the employees. I see no prejudice to the company because if the company had records, or intended to use records these could have been made available many months ago to the Director's delegate.

Mr. Premont presented the company's case. After I ruled that the company's application for an adjournment was not granted, Mr. Premont participated in the hearing by calling evidence and questioning some but not all of the witnesses. He was accorded a full opportunity to give an opening statement, present evidence, question witnesses and give closing argument.

In the course of the hearing Mr. Premont conceded that 80 % of the money was due and owing to the employees.

At the hearing Ms. Iles did not dispute the amount owing, although she did dispute that she was a Director of the Company and liable under s. 96 of the *Act*. I determined in a Decision issued concurrently (D #265/98) that at all material times Ms. Iles was a director of the company.

The company did not adduce any evidence at the hearing that indicated that the Director's delegate erred in the findings of fact made. Without setting out the details of the calculations, the Directors delegate found that wages were owing to 16 of the 17 employees who registered complaints with the Director. The amounts owing were for wages, overtime, and vacation pay. In the case of Alexander Hannig \$2,683.44 was found to be owing for a truck rental paid by use of Mr. Hannig's visa card.

The Director's delegate found that the amounts owing to each employee were as follows:

Jose Candelario	\$ 1,627.60
Wade Davidson	\$ 517.92
Carlos Duran	\$ 1,272.96
Alexander Hannig	\$ 6,747.26
Randy Hartley	\$ 499.20
Parm Hothi	\$ 1,343.04
Ajit Singh Jhutti	\$ 2,584.40
Tim Kelly	\$ 1,611.90
Harold McDonald	\$ 195.12
Thomas Markham	\$ 2,055.04
Tom McCallum	\$ 195.12
Tim Olhausen	\$ 2,325.44
Frank Oshowy	\$ 1,064.96
Luigi Parotta	\$ 2,728.40
Donald Patti	\$ 1,406.60
Ray Skakum	\$ 1,005.96

ANALYSIS

There was no significant challenge to the finding by the Director's delegate that the amount due and owing to the employees is \$25,787.99 in wages, plus \$857.50 in interest for a total of \$26,645.49.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated February 10, 1997 be confirmed and that further that interest be calculated in accordance with s. 88 of the *Act*.

.....
Paul E. Love
Adjudicator
Employment Standards Tribunal