

An appeal

- by -

Quizno's Canada Corporation
("Quizno's")

- of Determinations 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: Kenneth Wm. Thornicroft

FILE No.: 2002/173

DATE OF DECISION: June 17, 2002

DECISION

OVERVIEW

By way of a single notice of appeal Quizno's Canada Corporation ("Quizno's") appeals two separate Determinations that were issued against it by delegates of the Director of Employment Standards. These appeals are filed pursuant to section 112 of the *Employment Standards Act* (the "*Act*").

The first Determination being appealed was issued on March 15th, 2002 and ordered Quizno's to pay a total sum of \$1,657.12 to its former employees, Siamak Golzarfar ("Golzarfar") and Muhammad Usman ("Usman"), on account of unpaid wages and interest. Golzarfar was awarded \$60.68 including section 88 interest on account of unpaid regular wages; Usman was awarded \$1,596.44 comprised of \$1,237 for unpaid regular wages, \$276.14 for one week's wages as compensation for length of service and \$83.30 for section 88 interest. Further, in this same Determination, the Director also assessed a \$0 penalty (for various contraventions of the *Act* but not including a section 40 contravention) pursuant to section 98 of the *Act* and section 29 of the *Employment Standards Regulation*. I shall refer to this latter determination as the "Wage Determination".

The second determination being appealed was also issued on March 15th, 2002 and by way of this determination a \$300 monetary penalty was levied against Quizno's on the basis of a second contravention (involving 2 employees) of section 40 of the *Act*. Thus, the penalty imposed was \$150 multiplied by the number of affected employees (2) thus totalling a \$300 penalty--see section 29(2)(b) of the *Employment Standards Regulation*. I shall refer to this latter determination as the "Penalty Determination".

By way of a letter dated May 22nd, 2002 the parties were advised by the Tribunal's Vice-Chair that these appeals would be adjudicated based on the parties' written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

I shall address Quizno's appeal with respect to each of the two determinations in turn.

THE WAGE DETERMINATION

The Issue

In a letter dated April 2nd, 2002 (appended to the notice of appeal), Quizno's legal counsel states that the two complainant employees:

"...were employed by the corporation QCC Restaurant, British Columbia Incorporation No. 594366 as evidenced by the enclosed T4 Statements. Therefore, the employer liable under the [Wage Determination] must be changed to QCC Restaurant Holdings Limited..."

Findings

The material before me shows that there are several separate and distinct companies within what might be termed the “Quizno’s Group of Companies” at least three of which were originally incorporated as “numbered companies”.

The first numbered company, 519460 B.C. Ltd. was incorporated on May 8th, 1996 and subsequently changed its name to Quizno’s Canada Corporation (i.e., the employer named in the Wage Determination) and still later, on August 20th, 2001 (a date after the employees’ wage claims crystallized), changed its name yet again to QCC Ventures Corporation.

The second numbered company, 626514 British Columbia Ltd., was incorporated on April 25th, 2001 and its name was changed to Quizno’s Canada Corporation (i.e., the employer named in the Wage Determination) on August 21st, 2001. This latter date, I note, was after the two employees’ unpaid wage claims crystallized.

As noted above, legal counsel for the appellant says that the two employees were, in fact, employed by a third company, namely, QCC Restaurant Holdings Limited, a company--according to the material before me--that was also incorporated as a numbered company (594366 B.C. Ltd.). This latter company’s name was subsequently changed to Quizno’s Restaurant Holdings Limited on January 10th, 2000 and to its current name on August 20th, 2001.

At all material times, the delegate addressed his inquiries to Quizno’s Canada Corporation. Even though it would appear that the appellant never raised any argument about the proper identity of the employer during the delegate’s investigation, I do not propose to rest my decision on a strict application of the *Tri-West Tractor/Kaiser Stables* evidentiary rule.

The various companies all share the same registered and records office address and have common directors and officers. At various times, more than one of these corporations was in some way connected to the two complainant employees--by issuing cheques or by being named as the employer (either directly or by implication) in policy manuals or other correspondence. It may well be that all companies might have been properly designated to be “associated” under section 95 of the Act but no such declaration is before me.

In her April 24th, 2002 submission to the Tribunal, the delegate observed:

“It would appear that during various points of time there were multiple Corporations’ entities [sic], some with even the same name. Given this convoluted history it is almost impossible to ascertain what Corporate Entity should be responsible for the Penalty or for Usman and Golzarfar’s outstanding wages.”

I must acknowledge that, based on the material before me, I am in no better position. However, the appellant says that the employer named in the Wage Determination was not the employer. I am unable to accept that assertion based on the dearth of material before me. Quite simply, the appellant has failed to discharge its burden of proof on this appeal. Accordingly, the appeal of the Wage Determination must be dismissed. I wish to emphasize that I am resting my decision solely on the lack of evidence presented in support of this appeal.

As noted above, the Director may well wish to consider whether other corporations ought to be held jointly and severally responsible for the employees' wage claims through the application of section 95 of the *Act*.

THE PENALTY DETERMINATION

Contrary to the assertion made by counsel for the appellant, on the basis of the material before me, there was both a prior contravention (a \$0 penalty was levied by way of a determination issued on November 2nd, 1999) and a subsequent contravention (i.e., the Wage Determination) of section 40 of the *Act* and thus the Penalty Determination appears to have been properly issued. Since this most recent contravention involved two employees, a \$300 penalty was the proper amount to be assessed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Wage Determination be confirmed as issued in the amount of \$1,657.12 together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Pursuant to section 115 of the *Act*, I order that the Penalty Determination be confirmed as issued in the amount of \$300.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal