

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 -

Babek Industries Ltd., Colonial Enterprises Ltd., Deighton Building
Corporation, Fortin Holdings Ltd., Pepple Enterprises Ltd. And Winters
Residence Ltd.
(the “Employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Mark Thompson

FILE NO.: 98/188

DATE OF DECISION: June 23, 1998

DECISION

OVERVIEW

This is an appeal by Babeck Industries Ltd., Colonial Enterprises Ltd., Deighton Building Corporation, Fortin Holdings Ltd., Pepple Enterprises Ltd., and Winters Residence Ltd. (Associated Companies) (the “Employer”) pursuant to Section 112 of the *Employment Standards Act*, (the “Act”) against a Determination issued by a Delegate of the Director of Employment Standards on March 3, 1998. The Determination found that the named companies were associated pursuant to the provisions of Section 95 of the *Act*. The Determination further found that the Employer had violated Sections 17, 18, 40, 45 and 63 of the *Act*. Specifically, the Determination found that the Employer had failed to pay a former employee overtime pay, statutory holidays and compensation for length of service. The total amount owed to the former employee was \$3934.28, including interest. Counsel for the Employer appealed the Determination on the grounds that it was denied “a formal hearing” in order to cross-examine the complainant, that the Determination erred in finding that the complainant was terminated without notice and without cause, that the Determination erred in finding that the named companies were associated and that the Determination incorrectly found that the complainant was entitled to overtime and statutory holiday pay. Finally, Counsel stated that the Determination incorrectly found that any other company than Colonial Enterprises Ltd. and Fortin Holdings Ltd. was liable under the *Act*.

ISSUES TO BE DECIDED

The issues to be decided in this case are: was the Employer entitled to a hearing before the issuance of the Determination; were the named companies associated pursuant to the *Act*; was the complainant entitled to overtime and statutory and holiday pay and was the complainant terminated without cause.

FACTS

The appeal did not challenge any of the factual conclusions of the Determination. Stated briefly, the complainant, Mr. Scott Rice (“Rice”) was employed at various locations by the Employer from September 1995 through October 22, 1997. The Determination contained detailed calculations of the overtime and statutory holiday pay and compensation for length of service, based on the Employer’s payroll records. Counsel for the Employer stated that Rice was fired for cause because of his refusal to follow Company policy in respect of taking the breaks mandated by the *Act*.” The Director’s Delegate requested an explanation of this position, but the Employer did not provide additional information.

ANALYSIS

The Employer's appeal consisted of a series of statements that the Determination had erred on the grounds stated above. The first ground was that the Employer was denied a "formal hearing" prior to the issuance of the Determination. There is no provision in the *Act* for hearings prior to the issuance of a Determination. The *Act* requires complaints of violations to be investigated. Section 77 requires the Director to "make reasonable efforts to give a person under investigation as opportunity to respond." Evidently, the Employer had such an opportunity in this case. Section 79(1) of the *Act* states:

On completing an investigation, the director may make a determination under this section.

The Director's Delegate was acting in a quasi-judicial capacity when he conducted the investigation and made the Determination. See *BWI Business World Incorporated*, BC EST #D50/96. The Director's Delegate followed normal procedure in issuing the Determination in this case.

The appellant before this Tribunal bears the onus of demonstrating on the balance of probabilities that the Determination should varied or cancelled. See *World Project Management Inc. et al.* (BC EST #D134/97). Bald assertions without documentary evidence or legal arguments do not meet that onus. See *Buck* (BC EST #D038/97).

ORDER

For these reasons, the Determination of March 3, 1998 is confirmed, pursuant to Section 115 of the *Act*. In addition to the amount contained in the Determination, Rice is entitled to interest that accrued from the date of the Determination.

Mark Thompson
Adjudicator
Employment Standards Tribunal