

An appeal

- by -

Peter Clironomos
("Clironomos" or "Employer")

- 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: Paul E. Love

FILE No.: 2003A/234

DATE OF DECISION: October 15, 2003

DECISION

SUBMISSIONS BY

Peter Clironomos	for himself
Donald Ruehs	for himself
Ian MacNeill	for the Director of Employment Standards

OVERVIEW

This is an appeal by an employer, Peter Clironomos (“Clironomos” or “Employer”), from a Determination dated July 14, 2003 (the “Determination”) issued by a Delegate of the Director of Employment Standards (“Delegate”) pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113* (the “Act”). The Delegate conducted an investigation of a complaint made by Donald Ruehs (the “Employee”) after a telemarketing workplace was “raided” by the Vancouver City Police. The Employer failed to participate in an attempt by the delegate to resolve a complaint of non-payment of wages, and vacation pay.

On appeal, Mr. Clironomos submitted that he was never contacted by the Delegate during the investigation. There was evidence from the Delegate of a message left with a person resident at a property owned by Mr. Clironomos, and also evidence of a letter sent by the Delegate to Mr. Clironomos, which was not returned. I am satisfied that a reasonable opportunity was provided to Mr. Clironomos to participate in the investigation, pursuant to section 77 of the *Act*. The Employer failed to participate in the investigation by the Delegate, and the Delegate issued the Determination on the basis of information supplied by the Employee. The Delegate found Mr. Ruehs was entitled to regular wages, vacation pay and interest in the amount of \$1,084.72, plus an administrative penalty of \$1000 for two violations of the *Act*.

I considered carefully the submission of Mr. Clironomos. The submission filed by the Employer did not demonstrate that the Delegate erred in his conclusions that Mr. Ruehs worked as a telemarketer and was owed wages and vacation pay. The new information did not demonstrate any error in the Determination that Mr. Clironomos was the Employer, as opposed to “his company”. The Employer provided no evidence as to the existence of a company, or any payroll records identifying the company as the Employer of Mr. Ruehs.

Mr. Clironomos argued that the Delegate should not have imposed a penalty because there was no work performed at a Dunbar Street address which is the location set out in the penalty determination. I note that the workplace did not exist at the time of the investigation. The submission did not demonstrate any error in the conclusion that the Employer breached two provisions of the *Act* at one work place location. While the mis-specification of the workplace might cause problems for the Director in stepping up punishment for further future violations, the misidentification of the workplace did not establish any error in the Delegate’s conclusion that one Employer violated two provisions of the Act at one workplace. I therefore confirmed the Determination.

ISSUE:

Did the Delegate err in finding that the Employee was entitled to wages or that the Delegate erred in imposing a penalty for two violations of the *Act*?

FACTS

The Delegate issued the Determination and written reasons on May 30, 2003 after conducting an investigation. The Delegate issued the Determination based only upon information supplied by Mr. Ruehs. I decided this appeal after a review of the written submissions of the Employer, the Employee and the Delegate.

After receiving the complaint of Donald Ruehs, the Delegate left a message for Peter Clironomos at a telephone number, and an adult person said she would pass the message on to Peter. The Delegate also sent a letter to Mr. Clironomos at 3461 Blenheim Street in Vancouver. The Delegate sent the letter to the Blenheim Street address, as this was an address that was provided to him by a Vancouver City police officer. The Delegate also filed a copy of information received from the BC Assessment Authority showing that Peter Clironomos was one of three owners of 3461 Blenheim Street. The other two owners had the same last name as Mr. Clironomos, and appear to be male and female names.

The Delegate found that Donald Ruehs worked as a telephone salesperson from January 20, 2003 to February 18, 2003, at World Venture Communications, a business operated by Peter Clironomos. The Delegate determined that World Ventures Communications was “closed down February 18, 2003 by the Vancouver City Police”. The Delegate considered records of hours worked kept by the Mr. Ruehs. The Delegate accepted that Mr. Ruehs was paid \$10 per hour for the first six hours worked each day, and \$12.00 per hour for any additional hours worked. The Delegate accepted Mr. Ruehs information that he was unpaid for 8 hours per day for 12 days. The Delegate determined that Mr. Ruehs was not paid his wages for the period February 3 to 18, 2003. The Delegate determined that Mr. Ruehs was entitled to the sum of \$1,084.72, consisting of wages in the amount of \$1,008.00, annual vacation pay of 57.13, and accrued interest of \$19.59.

The Delegate also assessed an administrative penalty of \$1,000 for a breach of section 18(1) and 58(3) of the *Act* in regard to violations at the work location of 3456 Dunbar Street Vancouver. The actual location of the workplace is not set out in the Determination.

Employer’s Submission:

The Employer has filed an appeal alleging that there is evidence that has become available which was not available at the time the Determination was made. The Employer seeks to cancel the Determination and the penalty Determination. In an attachment to the appeal form, the Employer stated that:

I do not have any record of an employee named Donald Ruehs.

I did not receive any telephone messages or letters from Mr. Ian MacNeil in regards to this case at my residence or place of work.

3461 Blenheim Street, Vancouver, BC, is not my residence

work location is not 3456 Dunbar Street, Vancouver, BC, therefore the Administrative Penalty of \$1000 is not valid

The Employer submitted a further reply on September 17, 2003:

I have never met Detective McNamara of the Vancouver City Police at any time

I do own the home with the address of 3461 Blenheim Street, Vancouver, BC as I do other property but it is not my primary residence

I do not have any employees presently nor in the past

I am requesting Don Ruehs to provide Payroll Receipts for deduction and copies of any proof of employment for my company

Mr. Ruehs is saying that I was “well known to the police”. I find Mr. Ruehs statement that I’m “well known to the police” slanderous and a defamation of character. I ask Mr. Ruehs to refrain from such comment and in order to protect myself I shall seek my legal option. For the record I have no criminal record or have even been charged for anything.

Employee’s Submission:

The Employee’s submission essentially is that he previously received pay cheques from “Peter Clironomos”, and then he was paid cash by Mr. Clironomos, and then payments ceased. The Employee submits that Mr. Clironomos called Mr. Ruehs, by his name, on a number of occasions at the workplace. Mr. Ruehs states that he was present in the workplace, when the workplace was raided by the Vancouver City Police. He says that Mr. Clironomos kept a low profile after this point and he was dealing with a manager. The manager eventually had Mr. Clironomos call Mr. Ruehs, when Mr. Ruehs started contacting the manager on a daily basis about payment of wages. Mr. Clironomos telephoned Mr. Ruehs, called him by name, and told him that “the company’s bank account had been frozen by the Vancouver City Police”.

Director’s Submission:

The Director submits that Mr. Clironomos received a copy of the Employee’s self help kit, at the Dunbar Street address, prior to the filing of the complaint. The Delegate submits that Mr. Clironomos made no attempt to respond to the request for payment of wages, and no effort to determine who the complainant was. The Delegate submits that Mr. Clironomos is one of the owners at 3461 Blenheim Street, and that he left a message with an adult female for Mr. Clironomos to call him, and the adult female said she would pass on the message to Peter.

ANALYSIS

In an appeal of a Determination, the burden rests with the appellant, in this case the Employer, to demonstrate an error such that I should vary or cancel the Determination.

Section 112 (1)(c) of the *Act* provides for an appeal on grounds that:

- (a) the director erred in law;
- (b) the director failed to observe the principles of natural justice in making the determination;
- (c) evidence has become available that was not available at the time the determination was made.

I note that the Employee made an effort to attempt to resolve his dispute concerning payment of wages with Mr. Clironomos prior to the filing of the complaint. Mr. Clironomos did not raise any issue that a company was the employer. It appears that the Delegate made an effort to obtain Mr. Clironomos's side of the story. The Delegate left a telephone message, and wrote a letter directed to the address of Mr. Clironomos known to the Delegate. That letter was not returned to the Delegate.

Mr. Clironomos seeks to have the Determination set aside based on new evidence. I note that the evidence really is not new evidence, but evidence which was not provided to the Delegate at an earlier time. In my view the Delegate provided a reasonable opportunity to Mr. Clironomos to participate in the investigation.

I note in reviewing the first submission of Mr. Clironomos's, it is apparent that he has not denied that the Employee worked, he has merely alleged that he does not have any records. It appears, from the submissions made by the Delegate, that the records related to this work place were seized by the police. Mr. Clironomos's submission does not address Mr. Ruehs's allegation that Mr. Clironomos spoke to Mr. Ruehs in the workplace, and on the telephone, about wages. Mr. Clironomos's submissions do not show that the Delegate erred in concluding that Mr. Ruehs was an employee or that he was owed wages.

I have considered the following submissions made by Mr. Clironomos:

I do not have any employees presently nor in the past

I am requesting Don Ruehs to provide Payroll Receipts for deduction and copies of any proof of employment for my company

In these rather bare submissions, Mr. Clironomos implies that Mr. Ruehs worked for "his company". Mr. Clironomos has produced no records indicating that "a company" exists, that Mr. Ruehs was an employee of "his company", or that "the company" paid Mr. Ruehs's wages. As I have noted earlier, the appellant bears the burden of establishing an error in the Determination. In my view, the submission of Mr. Clironomos fails far short of meeting the burden on an appellant to demonstrate an error in the Determination that would make any difference in the Determination of the wage complaint by the Delegate.

For all the above reasons I am not satisfied that the Employer has shown any error in the Determination of the wage entitlement of Mr. Ruehs. I therefore confirm the portion of the Determination setting out the Employee's wage entitlement:

Penalty Appeal:

The Delegate imposed a penalty for a violation of section 18(1) and 58(3) of the *Act*. Section 18(1) of the *Act* provides for payment of all wages owing to an employee within 48 hours after the employer terminates the employee. Section 58(3) provides that the vacation pay must be paid to an employee at the time set by section 18 for the payment of wages. The submission of the Employer does not suggest that the Delegate erred in any finding that the Employer did not pay wages or vacation pay. I am satisfied that the Employer has shown no error, in the imposition of a penalty based on non-payment by the Employer of regular wages and vacation pay as required by sections 18(1) and 58(3).

The submission of the Employer is that the Delegate erred in imposing a penalty given that the work location was not at 3456 Dunbar Street. There is a further submission that Mr. Clironomos was not the Employer, but I have addressed this submission above.

The penalty scheme in the *Employment Standards Regulation, B.C. Reg. 396/95* as amended (the “Regulation”) provides as follows:

- 29 (1) Subject to section 81 of the Act and any right of appeal under Part 13 of the Act, a person who contravenes a provision of the Act or this regulation, as found by the director in a determination made under the Act, must pay the following administrative penalty:
- (a) if the person contravenes a provision that has not been previously contravened by that period, or that has not been contravened by that period in the 3 year period preceeding the contravention, a fine of \$500.00;
 - (b) if the person contravenes the same provision referred to in paragraph (a) in the 3 year period following the date that the contravention under that paragraph occurred, a fine of \$2,500;
 - (c) if the person contravenes the same provision referred to in paragraph (a) in the 3 year period following the date that the contravention under paragraph (b) occurred, a fine of \$10,000.

I note that the Delegate imposed a penalty based on two infractions of the *Act*, in respect of a work location of 3456 Dunbar. The Employee did not allege work was performed at the Dunbar Street location. It appears that the Dunbar Street location “may” be the residential address of the Employer. It is clear that there has been two breaches of the *Act*, by one person, in respect of one work place.

The “new” information raised by the Employer is that Dunbar Street was not the workplace. Mr. Clironomos has not supplied the address of the workplace in his submissions. The new information raised does not, however, cast any doubt on the findings that the Employer violated two provisions of the *Act*, in respect of work performed at one workplace. I am satisfied that there is no error in imposing the penalty. I note that the form of penalty imposed may cause a problem in proof for the Director, if there are future violations of the *Act*, and the Director seeks to “step up” the punishment.

For the above reasons, I am not satisfied that the Employer has demonstrated any error in the decision of the Delegate to impose an administrative penalty of \$1000, for two violations of the *Act*.

ORDER

Pursuant to s. 115 of the *Act* the Determination dated July 14, 2003 is confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal