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 -

Knutson First Aid Services (1994) Ltd.
(“ Knutson ”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/068

DATE OF DECISION: July 24, 2000

DECISION

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) by Knutson First Aid Services (1994) Ltd. ("Knutson") of a Determination that was issued on January 14, 2000 by a delegate of the Director of Employment Standards (the "Director"). The Determination concluded that Knutson had contravened Section 17 of the *Act* in respect of the employment of Michael Morris ("Morris"), ordered Knutson to cease contravening and to comply with the *Act* and ordered Knutson to pay an amount of $2333.82.

Knutson says that the Determination was wrong in its conclusion that Morris was "on call at a location designated by the employer, other than his residence".

ISSUES TO BE DECIDED

The issue in this appeal is whether the Director was correct in determining the first aid trailer in which Morris stayed while employed by Knutson was not his "residence" under the definition of "work" in subsection 1(2) of the *Act*.

FACTS

The facts in this appeal are not in dispute. Morris worked for Knutson from January 26, 1999 to February 2, 1999 as a first aid attendant on an oil drilling rig site at a rate of $10.00 an hour. He was paid for a 10 hour shift.

The drilling site was located 130 kilometres north of Fort St, John and " 20 kilometres into the bush". It operated 24 hours a day, running 2 shifts of 12 hours each. Under Workers' Compensation Regulations it is mandatory that a first aid attendant be present during periods of operation. Morris was required to be on site and on call 24 hours a day. While on site he stayed in the first aid trailer.

The first aid trailer was described in the Determination as an Atco trailer unit, approximately 10 feet in width by 30 feet in length, that:

> consisted of 3 rooms, a bedroom, a first aid room and a washroom. The first aid room consisted of a fridge, stove, small table and 2 chairs and a first aid bed. There was no living room.

In the appeal, counsel for Knutson described the first aid trailer as:

> . . . essentially an Atco trailer 30 feet by 10 feet, with kitchen, bathroom and living facilities, . . .

In a later submission it was noted that the trailer was a CORAB unit, not an Atco unit, and included a private bedroom, private bathroom, kitchen and living room. As a matter of fact, the area identified as the "living room" was equipped as the first aid room, and contained the first aid bed.

While the first aid trailer did contain a kitchen, including a small stove, it appears that Morris took most (if not all) of his meals in the site kitchen, which was approximately 3 minutes from the trailer. The Determination notes that Morris, during periods of employment "would live out of a suitcase, packing a change of clothes, toiletries and books to pass the time".

ANALYSIS

The *Act* defines "work":

> ***"work"*** *means the labour or services an employee performs for an employer whether in an employee's residence or elsewhere.*
>
> *(2) An employee is deemed to be at work while on call at a location designated by the employer unless the designated location is the employee's residence.*

Neither the *Act* nor the *Employment Standards Regulation* (the *"Regulation"*) define residence. Counsel for Knutson urges a broad approach to the idea of residence, represented by a continuum, which would have at one end the permanent family home, with all amenities in place, and at the other a location as impermanent as a tent in a campground. He argues that the first aid trailer, while it would be placed toward the impermanent end of the continuum, would nevertheless qualify as a residence.

Counsel also contends that the most relevant definition of residence for the purposes of the *Act* is found in the *Residential Tenancy Act*, which, he says, would include the first aid trailer in the definition of "residential premises". While definitions contained in other statutes may from time to time be helpful in defining terms for the purposes of the *Act*, the relevance of the *Residential Tenancy Act* to that purpose escapes me. The *Act* is remedial legislation and one of its primary purposes is to ensure that employees in the province receive at least the basic standards of compensation and conditions of employment. There is nothing in the submission of counsel for Knutson that indicates how adopting the definitions contained in the *Residential Tenancy Act* are consistent with the objects of the *Act*. The *Act*, including the *Regulation*, should be interpreted in a manner that is consistent with its remedial nature. The following comments from the Supreme Court of Canada in *Re Rizzo & Rizzo Shoes Ltd.*, [1998] 1 S.C.R. 27 guides the interpretive approach to Section 37.5 and the Appendices:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> (para. 21)

I agree with the Director that subsection 1(2) derogates from the minimum standards of the *Act* because it denies an employee entitlement to wages for "work" when that employee is on call at a location designated by the employer if the designated location is that employee's residence. At any other location designated by an employer, that employee would be entitled to be paid wages

for being on call. A strict interpretation of provisions that derogate from minimum standards is consistent with the remedial nature of the *Act* and with its purposes. I adopt and apply the following comment from *Machtinger v. HOJ Industries Ltd.* (1992) 91 D.L.R. (4th) 491 (S.C.C.), that:

> . . . an interpretation of the Act which encourages employers to comply with the minimum requirements of the Act, and so extends its protection to as many employees as possible is favoured over one that does not.

The Director argues that I should adopt an approach to the meaning of residence in this case that is consistent with the Tribunal's comments in *Corner House*, *infra*.

In *Anne Elizabeth Lowan and Timothy James Lowan operating as Corner House*, BC EST #D254/98, the Tribunal addressed the meaning of "residence" in the context of the definition of "residential care worker" in the *Regulation*, and reached the following conclusion:

> Residence seems to be a notion which the courts and legislatures have rarely clearly defined. It seems to be a notion which is accepted in a common sense way. Residence then is something short of domicile, i.e. the intention to remain in that place permanently, but something more than temporary or intermittent. It has some degree of permanence; it is the person's settled abode; it is the place they carry on the settled routines of life. It would be the place one hangs one's hat, keeps one's clothes, stores treasures and family memories; a place of privacy protected in law from state intrusions; and a place of retreat from the turmoil of the workplace. It would be a place to entertain one's friends. It would be an address of one's own, a phone number, and a place to receive mail.
>
> This is not to say that there are not situations where an employee gives up some of the benefits of a private residence to live communally or at a place of work. For a workplace to also be considered a residence the place of work must assume some of the qualities of a residence. There must be some degree of privacy; a space, all be it limited, to call one's own. There must be some degree of settlement to carry on as much of those everyday things as possible, subject only to the minimum necessary intrusions of the requirements of the employment. There must be some element of permanence as opposed to the intermittent or temporary.

In reaching that conclusion, the Tribunal seemed to be particularly influenced by a discussion by the Supreme Court of Canada in *Thompson v. M.N.R.*, [1946] S.C.R. 209:

> There is no definition in the Act of "resident" or "ordinarily resident" but they should receive the meaning ascribed to them by common usage . . . The Shorter Oxford English Dictionary gives the meaning of "reside" as being "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live, in or at a particular place".
>
> A reference to the dictionary and judicial comments upon the meaning of these terms indicates that one is "ordinarily resident" in the place where in the settled routine of his life he regularly, normally, or customarily lives. One "sojourns" at a

> place where he unusually, casually or intermittently visits or stays. In the former the element of permanence; in the latter that of the temporary predominates. The difference cannot be stated in precise and definite terms, but each case must be determined after all of the relevant factors are taken into consideration, but the foregoing indicates in a general way the essential difference. It is not the length of the visit or stay that determines the question.

It is obvious from the above excerpts that the Tribunal has accepted and incorporated the requirement of a degree of permanence or settlement into the meaning of residence for the purposes of the *Act*. I agree with that approach. It is a common sense approach to the notion of "residence" that is not inconsistent with common usage, but is sufficiently "strict" that it meets the purposes and objects of the *Act* and is consistent with its remedial nature.

It follows that I do not accept the argument of counsel for Knutson that something as impermanent as a tent in a campground could be considered as being on a continuum of what is a "residence" for the purposes of the *Act*. I don't disagree with the notion of there being a continuum for what is a "residence" for the purposes of the *Act*, but in order to be anywhere on that continuum the location being considered must at least demonstrate the degree of permanence contemplated by the Tribunal's comments in the *Corner House* case.

Finally, counsel for Knutson contends the Determination is unfair, and contrary to the stated purpose found in Section 2(d) of the *Act*, because many persons are excluded by the *Regulation* from minimum provisions of the *Act*. That argument is answered in the above analysis. Simply put, any provision that derogates from minimum employment standards will be strictly construed. In my opinion, such an approach is consistent with the remedial nature of the *Act* and with the scheme of the *Act*, its objects and purposes and the intention of the legislature. In this case, the Director concluded that a residence, for the purposes of the *Act*, needed to demonstrate a degree of permanence and settlement than was not present in this case. There was nothing wrong with that conclusion.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated January 14, 2000 be confirmed, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal