

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-

Dr. Todd Jones Inc.

(“Todd Jones”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/238

DATE OF DECISION: July 11th, 1997

DECISION

OVERVIEW

This is an appeal brought by Todd Jones, presumably on behalf of Dr. Todd Jones Inc. (“Todd Jones”), pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on March 18th, 1997 under file number 080860. The Director determined that Todd Jones and West Coast Periodontal Management Inc. (“West Coast”) were associated firms and owed a former employee, Jason R.A. Mabbott (“Mabbott”) the sum of \$1,978.70 on account of unpaid wages owed to Mabbott by reason of section 34 of the *Act*.

FACTS

On July 18th, 1995 Mabbott was hired by Dr. R. Brilz Inc. as a clinical assistant at a wage rate of \$8 per hour. Apparently, Mabbott’s duties included cleaning and otherwise caring for dental instruments used in the clinic.

According to the Determination, on October 13th, 1995, Dr. R. Brilz Inc. was renamed West Coast Periodontal Management Inc., a corporation controlled by Randy Brilz and Todd Jones who are both directors and officers. On May 1st, 1996 Mabbott’s employment was transferred from West Coast to Dr. Todd Jones Inc.; Mabbott was subsequently terminated by the latter firm and was issued a Record of Employment by Dr. Todd Jones Inc. in which his employment was stated to have run from July 18th, 1995 (*i.e.*, his date of hire by Dr. R. Brilz Inc.) to October 15th, 1996. At the point of termination, Mabbott was earning \$9 per hour.

The Director held that West Coast and Dr. Todd Jones Inc. were associated firms within section 95 of the *Act* and, as such, were both liable for unpaid wages owed to Mabbott by reason of section 34(2)(a) of the *Act*--the 4 hour minimum daily wage provision.

ISSUES TO BE DECIDED

Todd Jones’ appeal is based on two grounds:

Firstly, that Mabbott was not entitled to file a claim under the *Act* because, at all material times, he was a “student” as defined in section 32 of the *Employment Standards Regulation* and, therefore, excluded from the *Act*.

Secondly, Todd Jones says that “I have been assigned 100% of the financial [sic] penalty that applied to West Coast Management Inc. I only owned 50% of this company. Dr. Brilz should be responsible for 50% of any financial [sic] penalty assessed [sic] to this company.”

ANALYSIS

Todd Jones says that at all material times Mabbott either was, or held himself out to be, a student enrolled at either the University of Victoria or Camosun College. However, taking that assertion at face value, I am not satisfied that Mabbott was excluded from the *Act*. Subsections 32(1)(a) and (b) of the *Employment Standards Regulation* exempt students as defined by the *School Act* or the *Independent School Act*; these exclusions do *not* extend to post-secondary students enrolled at a college or university.

The Legislature has drawn a distinction between secondary and post-secondary institutions in other provisions of the *Regulation* [compare, for example, ss. 34(1)(c) and (d) with ss. 34(1)(s), (t), (u) and (v) of the *Regulation*] and the failure to refer to either college or university students in ss. 32(1)(a) and (b) is telling. Further, section 34(3) of the *Act* has no application to the present case as Mabbott clearly was not a “school student” as defined in section 1 of the *Act* (and, in any event, the payroll records before me indicate the Mabbott never worked less than two hours on any given shift thus rendering s. 34(3) moot in the circumstances of this case).

As for Todd Jones’ assertion that it should only be held liable for one-half the amount of the Determination, the short answer is that once a finding has been made that two corporations are “associated” as defined by section 95 of the *Act* (and that finding has not been disputed in this case), the liability of the associated firms is joint and several. In other words, *both* parties are liable for the full amount set out in the Determination. In the present case, if Todd Jones pays 100% of the amount owed under the Determination, its remedy is to claim reimbursement for 50% of the monies so paid from West Coast--such a remedy is known as a claim for contribution and indemnity.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination issued in this matter, dated March 18th, 1997 and filed under number 080860, be confirmed as issued in the amount of \$1,978.70 together with whatever further interest may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal