

An appeal

- by -

Dan Dennill and Marlene Dennill operating as
Fibremaster Restorations & Carpet
(‘Fibremaster’)

- 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: David B. Stevenson

FILE No.: 2001/231

DATE OF DECISION: June 15, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Dan Dennill and Marlene Dennill operating as Fibremaster Restorations & Carpet (“Fibremaster”) of a Determination that was issued on March 12, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Fibremaster had contravened Part 3, Section 18(2) and Part 7, Section 58(3) of the *Act* in respect of the employment of Daniel Marcotte (“Marcotte”), Glenda Andrews (“Andrews”) and Darryl Rosa (“Rosa”) and ordered Fibremaster to cease contravening and to comply with the *Act* and to pay an amount of \$1,545.01.

Fibremaster has appealed the Determination as it applies to Marcotte and Andrews on the grounds that those persons were sub-contractors, not employees under the *Act*. The appeal, in its entirety, states:

A Determination regarding Daniel Marcotte and Glenda Andrews was issued for wages and vacation pay. Both Mr. Marcotte and Ms. Andrews were sub-contractors and are not entitled to annual vacation pay. Again this matter goes with the above mentioned Determination of section 46 and section 28 at the time of moving and being ill. Further investigation into this matter would be appreciated. Now that we are settled into our home and the office folders are unpacked and everybody is feeling better.

No documents or any other material has been provided with the appeal.

ISSUE

The issue raised by this appeal is whether Fibremaster has demonstrated an error in the Determination such that the Tribunal would be justified in varying or cancelling it.

FACTS

The Determination notes:

. . . the employer has submitted no evidence to establish a sub-contract relationship. Both complainants deny the sub-contract relationship. The investigating officer is satisfied that based on the duties performed, the direction and control of the employer, the nature of the work, the manner of the customer/client contracts and billing that both Daniel Marcotte and Glenda Andrews are employees within the meaning of the Act.

Marcotte and Andrews were employed by Fibremaster as janitors at a rate of \$9.00 an hour. Both indicated they worked under the direction and control of Fibremaster, at location sites contracted with Fibremaster, that all material to perform the work was supplied by Fibremaster, and that Fibremaster billed the customers.

ARGUMENT AND ANALYSIS

Fibremaster has still provided no evidence showing the existence of a sub-contract relationship between the individuals and Fibremaster or that the employees are not employees for the purposes of the *Act*. The burden on Fibremaster in this appeal is to demonstrate an error in the Determination. They have failed to do so and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 12, 2001 be confirmed in the amount of \$1,545.01, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal