

An appeal

- by -

AVT Audio Visual Telecommunications Corporation
(“AVT”)

- 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: John M. Orr

FILE No.: 2003A/249

DATE OF DECISION: December 10, 2003

DECISION

SUBMISSIONS

K.E. Johnson Law Corporation

on behalf of AVT

OVERVIEW

This is an appeal by AVT Audio Visual Telecommunications Corporation (“AVT” or “the Company”) pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination dated August 18, 2003 by the Director of Employment Standards (the "Director").

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

The Director determined that AVT owed wages to four former employees. AVT argued that the employees had agreed to vary their employment contracts to accept shares in the company instead of wages due to cash flow problems in this start-up business. The Director determined that Section 4 of the *Act* renders any such agreement of no effect to alter the original employment contract and found that the wages had to be paid in cash and not in shares.

AVT has appealed on the basis that the Director made an error in law in finding that the agreement was ineffective.

ISSUE

The issue in this case is whether it is permissible to pay wages through the issuing of shares in the stock of the Company.

ARGUMENT

AVT submits that it is always possible for an employer and employee to re-negotiate an employment contract. In this case, it is submitted that the employees all freely and voluntarily agreed to vary their employment contracts because of the cash flow problems facing this start-up company. It is submitted that the employees agreed to accept shares of double the value of the wages owed in lieu of the actual wages.

AVT also alleges that there was a conspiracy by the employees to take over the Company and that the Director has been used as a means to effect this objective.

ANALYSIS

In my opinion the Tribunal does not have any jurisdiction to address the issue raised by AVT that the employees were involved in a conspiracy to take over the Company. AVT has not provided any legislative basis for the Tribunal to act on this complaint.

I have considered the other submissions by AVT in this appeal and have concluded that the appeal should be dismissed. In my opinion the Director correctly applied Section 4 of the *Act*, which states that:

The requirements of this Act and the regulations are minimum requirements and an agreement to waive any of those requirements, not being an agreement referred to in section 3 (2) or (4), has no effect.

The Director then applied this principle to the requirements of Section 17 and 18, which require the regular payment of wages within certain strict time periods. It was determined that the receipt of share certificates could not meet these requirements.

However, the Director did not refer to Section 20, which is an even greater detriment to the plan submitted by AVT. Section 20 of the *Act* provides that:

An employer must pay all wages

- (a) In Canadian currency,
- (b) by cheque, draft or money order, payable on demand, drawn on a savings institution, or
- (c) by deposit to the credit of an employee's account in a savings institution, if authorized by the employee in writing or by a collective agreement.

The Tribunal has interpreted this section on many occasions and has found, for example, that wages could not be paid by supplying accommodation, a free rental suite, room and board, utilities, a free car, free clothing, free Subway sandwiches, unlimited free movies, payment of a gasoline credit card, or paid trips. Clearly barter of goods or services is not permitted under the legislation: *Skeena Valley Guru Nanak Brotherhood Society* BCEST # RD068/02. I am not persuaded that there is any way to distinguish the giving of shares in the company from this general principle. Accordingly, I conclude that share certificates may not be given instead of Canadian cash wages despite any agreement to this effect and this appeal must fail.

ORDER

I order, under section 115 of the *Act*, that the Determination herein dated August 18, 2003 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal