Employment Standards TRIBUNAL

An appeal

- by -

Autosource Investments International Inc. op. as Kelowna Trucks Plus Canada
("Autosource" or the "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: Ib S. Petersen

FILE No.: 2001/135

DATE OF DECISION: July 10, 2001

DECISION

APPEARANCES/SUBMISSIONS

Mr. Kerry Gustafson	on behalf of Autosource
Mr. William Marks	on behalf of himself
Mr. Robert Pingle	on behalf of himself
Mr. Spencer Wylie	on behalf of himself
Mr. Randall Yakiwchuck	on behalf of himself
Mr. Robert Turner	on behalf of the Director

OVERVIEW

This is an appeal by Autosource pursuant to Section 112 of the *Employment Standards Act* (the "*Act*"), against a Determination of the Director of Employment Standards (the "Director") issued on January 18, 2001 which determined that Jay Brett, Marks, Pringle, Wylie and Yakiwchuck (the "Employees" or the "Drivers") were employees of Autosource and that they were owed $25,742.93 on account of regular wages, overtime, statutory holiday pay and vacation pay.

Autosource argues that the Determination is wrong because the Employees were, in fact, independent contractors and not employees.

FACTS AND ANALYSIS

The appellant, Autosource, has the burden to persuade me that the Determination is wrong. For the reasons set out below, I am not satisfied that it has met that burden and dismiss the appeal.

The basic background facts may be gleamed from the Determination. Autosource operates a truck and automobile dealership in Kelowna with a retail store for the local market and an extensive wholesale business, primarily re-selling vehicles to dealers in the United States. The Employees were drivers for Autosource at various times between September 1995 and March 2000. They delivered or picked up vehicles in Western Canada and the U.S. They were compensated by the mile, $.40/mile. In April 1998, Revenue Canada ruled that Marks was an employee for the purposes of the *Income Tax Act* and, from the Determination, it appears that the Employer from July 1998 (more or less) were treating the Drivers as employees, taking statutory deductions and paying vacation pay. Statutory holidays and overtime was not paid.

The delegate concluded that the operation was within provincial jurisdiction and that the Drivers were employees. His analysis is brief and to the point:

> "The employer has raised the matter of whether the drivers were employees. Revenue Canada resolved that matter to its satisfaction in 1998, finding that the drivers were employees. There is no new evidence to suggest otherwise to me.

> The drivers were told when to start (in Kelowna) and when to quit (by getting a vehicle to a destination by a target deadline). The drivers provided no tools or other assets in support of their work. They had no chance of financial profit from their work and no opportunity for financial loss. I must concur with Revenue Canada and conclude that the drivers were employees."

The issue before me appears to be whether the Drivers were employees. While the delegate's analysis is brief, I generally agree with it. The delegate did not simply apply Revenue Canada's determination to the facts at hand. There is nothing before me to suggest that he did not consider the matter from the standpoint of the *Act*.

There is little relevant information in the appeal, other than bald assertions that the matter is complex, has industry wide implications, the drivers preferred the arrangement established by the Employer and were free to accept work for other companies as well. The appeal lacks detail and particulars and may best be described as a general disagreement with the delegate's conclusions. In my view, the Employer has not even made out a *prima facie* case--*i.e.*, a case that will prevail until contradicted and overcome by other evidence--to set aside the Determination. For that reason alone, I dismiss the appeal. Certainly, there is no basis for ordering an oral hearing as requested by the Employer.

I add, as well, that on the basis of material submitted on appeal, mostly by the Employees, there is nothing before me that would cause me to reach a different conclusion with respect to the status of these Drivers. Some of this material consists of documents, such as a vehicle dealer identification card identifying the bearer as an employee, T-4's, Records of Employment, pay stubs indicating statutory deductions, and a letter stating that Yakiwchuck is a "full-time employee" of the Employer. There is substantially no response from the Employer to this information and documentation.

In brief, therefore, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated January 18, 2001 be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal