

An appeal

- by -

Peace On It Holdings Inc.  
("Peace Inc.")

- 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.:** 2002/262

**DATE OF DECISION:** August 15, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Peace On It Holdings Inc. (“Peace Inc.”) of a Determination that was issued on April 22, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Peace Inc. had contravened Part 7, Section 58(3) and Part 8, Section 63(2) of the *Act* in respect of the employment of Thomas E. Bennett (“Bennett”) and ordered Peace Inc. to cease contravening and to comply with the *Act* and to pay an amount of \$6,461.66.

Peace Inc. says the Determination is wrong because Peace Inc. sold the company and the responsibility for unpaid wages to Bennett belongs to the purchaser, Triac Industries Inc.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

### ISSUE

The issue in this appeal is whether Peace Inc. has shown an error in the Determination sufficient to persuade the Tribunal to exercise its authority under Section 115 of the *Act* to cancel it and to send it back to the Director for further investigation.

### FACTS

Peace Inc. was formerly known as Pacific Pools Inc. The company was in the manufacturing and distribution of wholesale spa and pool products. Bennett worked from May 1987 until February 16, 2001 as an assistant manager at a rate of \$18.06 an hour. Bennett worked in the Kelowna operation of Pacific Pools Inc. His employment was terminated on February 16, 2001. The Determination found that Pacific Pools Inc. was disposed of effective February 28, 2001.

The burden is on Peace Inc., as the appellant, to persuade the Tribunal that the Determination was wrong, in law, in fact or in some manner of mixed law and fact. Placing the burden on the appellant is consistent with the scheme of the *Act*, which contemplates that the procedure under Section 112 of the *Act* is an appeal from a determination already made and otherwise enforceable in law, and with the objects and purposes of the *Act*, in the sense that it would it be neither fair nor efficient to ignore the initial work of the Director (see *World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96)). In the circumstances, the specific burden on Peace Inc. is to show that the conclusions of the Director that Bennett was terminated before the disposition of Pacific Pools Inc. became effective and that Bennett did not become an employee of Triac Industries Inc., or any related company, were wrong.

The relevant provision of the *Act* is Section 97 of the *Act*, which says:

97. *If all or part of a business or a substantial part of the entire assets of a business is disposed of the employment of an employee of the business is deemed, for the purposes of this Act to be continuous and uninterrupted by the disposition.*

In *Dharampal Singh Gill*, BC EST #D544/00 (Reconsideration denied, BC EST #RD040/02), the Tribunal made the following comments concerning the interpretation and application of Section 97 of the *Act*:

Section 97 is triggered when the individual in question is an “employee of the business” on the date of the disposition. The disposition itself does not terminate the employment relationship; the employment relationship merely continues with the successor employer being, in effect, substituted for the previous employer as the employer of record. This is not to say that the new employer must continue to employ all of the employees of the former employer. However, unless appropriate arrangements are made so that the employment of such persons is terminated on or before the disposition is completed, those employees continue on as employees of the new employer and retain all of their accrued rights and entitlements (including service-based benefits), but only insofar as the *Act* is concerned, vis-à-vis the new employer--see *Helping Hands Agency Ltd. v. B.C. Director of Employment Standards* (1995), 15 B.C.L.R. (3d) 217 (B.C.C.A.).

If an employee is terminated prior to the disposition, Section 97 is not applicable, see *Director of Employment Standards (Re Primadonna Ristorante Italiano)*, BC EST #RD046/01 (Reconsideration of BC EST #D466/99).

Peace Inc. argues that Triac Industries Inc. took over the operations of Pacific Pools Inc. as of February 1, 2001, that Bennett became an employee of that company and that the responsibility for his unpaid wages belongs to that company.

In reply, the Director re-asserts that the weight of the relevant documentation and information acquired during the investigation supported a conclusion that Bennett was terminated from Pacific Pools Inc. prior to the disposition, that he never became an employee of the ‘purchaser’ and, consequently, that the liability for unpaid wages and for length of service compensation on termination remained with Peace Inc.

In my view, the material on file amply supports the conclusion reached in the Determination that Bennett was terminated prior to the disposition and that he was never an employee of the ‘purchaser’. Peace Inc. has provided the Tribunal with copies of T4 slips from Pacific Pools Inc. for Bennett and other former employees for the year 2001, which Peace Inc. says shows their payroll records ending as of February 1, 2001.

Against that material, there is a Record of Employment showing Bennett’s last day of employment with Pacific Pools Inc. as February 16, 2001. As well, there is the information from Bennett himself and that of Bob Maeers, former manager of the Kelowna branch of Pacific Pools Inc. that he was told by Mr. Mesbah Taherzadeh, then the sole director/officer and principal of Pacific Pools Inc., that he and Bennett were being terminated as the company was being sold. Peace Inc. says the Record of Employment is a forged document. The suggestion is preposterous in light of the circumstances in which the document was acquired. More importantly, Peace Inc. has not shown Bennett was ever employed by Triac Enterprises Inc. or any associated company. Overall, Peace Inc. has not shown the Determination is wrong and the appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated April 22, 2002 be confirmed in the amount of \$6,461.66, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**