

**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 -

Goose Amusements Ltd.; Mr. Werner Hintermeister Director,  
Goose Amusements Ltd.  
("Goose Amusements")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Niki Buchan

**FILE NO.:** 97/228

**DATE OF HEARING:** August 18, 1997

**DATE OF DECISION:** September 17, 1997

**DECISION**

**APPEARANCES**

Les Eshani	For Goose Amusements.
Jean Fales	For Himself
Alexandre Dagensis	For Himself
Pierre P. Campeau	For Himself
R.A. Stea	For the Director

**OVERVIEW**

This is an appeal brought by Werner Hintermeister on behalf of Goose Amusements Ltd. and himself as a director pursuant to S. 112 of the *Employment Standards Act* (the “Act”) of Determination dated March 14, 1997 issued by the delegate of the Director of Employment Standards (the “Director”). The Determination finds that Goose Amusements Ltd. has contravened Section 17 of the *Act* and that outstanding wages are owing to each complainant. In the absence of payroll records from the employer, all calculations are based solely on information provided by each complainant. In addition, as the employer is no longer operating, a Director’s Determination was issued concurrently against Mr. Werner Hintermeister, President/Secretary, pursuant to Section 96 of the *Act*.

Mr. Hintermeister in his appeal submissions alleges that Goose Amusements was not provided adequate opportunity to present its position prior to a settlement meeting on January 29, 1997. He states that the meeting was the only time they were called to defend their case and that the Director had prejudged the matter. He claims that there is no evidence at all to support this Determination and that the individuals were paid fully and fairly.

**ISSUES TO BE DECIDED**

1. Whether Goose Amusements Ltd. had opportunity to present its position prior to the Determination?
2. Whether Goose Amusements Ltd. contravened Section 17 of the Act?
3. Whether outstanding wages are owing to Jean Fales, Alexandre Dagenais and Pierre P. Campeau?

**FACTS**

1. Jean Fales (“Fales”), Alexandre Degenasis (“Degenasis”) and Pierre P. Campeau (“Campeau”) quit their employment with Goose Amusements Ltd. on or about October 21, 1996 because they were not being paid the proper amounts for their work. During September and October 1996 they were given small payments that were considered an advance on wages and promised that they would get their money. When payment was not received by October 21, 1996 they quit their jobs.
2. Goose Amusements Ltd. and Mr. Hintermeister were represented by a lawyer in this matter except at the settlement meeting in January. He advised the Director that Mr. Hintermeister resides in Vancouver and had no direct information to offer as he left running of his business to his managers, Messrs. Les Eshani (“Eshani”) and David Logan (“Logan”).
3. In January 1997, the Director was in contact with the lawyer on five separate occasions attempting to obtain payroll records and/or to set up a settlement meeting. When advised by the lawyer that there were no longer any payroll records he informed the lawyer that he would rely on the information provided by each complainant as regards to calculations of their respective claims and that he would question any perceived irregularities, if necessary.
4. A settlement meeting was held on January 29, 1997 with Eshani and Logan representing Goose Amusements Ltd. The Director sought and obtained confirmation that Eshani had authority to commit the company and Mr. Hintermeister to any settlement. Eshani and Logan had an opportunity to question each of the complainants.
5. It was at this meeting, Eshani informed the Director that the only remaining records were cheque stubs received from Comcheq Services Ltd., the company that prepared payroll payments. He explained that the pay stubs were not accurate as the hours worked by each employee were a default placed there by the computer. Comcheq Services Ltd. was advised the total amount to be paid to each employee not the number of hours worked and rate of pay. He advised that he had copies of pay stubs and agreed to send them to the Director. The pay stubs were never produced despite five contacts with the solicitor and/or Eshani during February.
6. Eshani gave evidence during the hearing that they were not produced because they had not been kept.
7. All calculations of amounts owing for outstanding wages were based on information provided by Fales, Degenaris and Campeau since no records were produced by Eshani to confirm that these wages had been paid.
8. Goose Amusements Ltd. was sold to a new owner subsequent to the complainants quitting their jobs.

**ANALYSIS**

The allegation that Goose Amusements Ltd. was not provided opportunity to present it's position prior to a settlement meeting on January 29, 1997 is unfounded. The Director informed the lawyer representing Goose Amusements Ltd. and Mr. Hintermeister of the complaints and requested payroll records during the investigation. He was advised by the lawyer that there were no longer any payroll records. In the absence of payroll records, a settlement meeting was then scheduled. That meeting provided an opportunity for Eshani to present whatever evidence was available to substantiate the claims that the complainants had been paid some of all of their wages. Instead, he agreed to provide pay stubs which were never produced.

I am satisfied that the Director had not prejudged the case. He allowed ample time following the January meeting for the production of the pay stubs documentation and/or an attempt to settle the matter.

Mr. Hintermeister alleges that the individuals were paid fully and fairly. It is a requirement of the *Act* that an employer keep payroll records and retain them for seven years after employment terminates. This was not done. No evidence or argument has been provided to cancel or vary the Determination. The Director correctly determined that Goose Amusements contravened S. 17 of the *Act* and that outstanding wages are owing to Fales, Degenais and Campeau..

**ORDER**

In summary, I order under Section 115 of the *Act*, the Determination dated April 16, 1997 be confirmed.

**Niki Buchan**  
**Adjudicator**  
**Employment Standards Tribunal**