

**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 -

Bruce Clarke Operating H. B. Clarke & Associates  
("Clarke")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Niki Buchan

**FILE NO.:** 97/277

**DATE OF HEARING:** August 22, 1997

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

**DECISION**

**APPEARANCES**

Bruce Clarke  
Nick Templeman  
Beth Lyle

Appellant  
for Himself  
for the Director

**OVERVIEW**

This is an appeal brought by Bruce Clarke Operating H. B. Clarke & Associates of Determination dated April 08, 1997 issued by the delegate of the Director of Employment Standards (the "Director"). The Determination finds that Clarke contravened Sections 18(2) & 58(3) of the *Employment Standards Act* (the "Act"). Clarke is ordered to pay Nick Templeman ("Templeman") \$807.17 composed of wages, vacation pay and interest.

Clarke alleges that it is not clear whether Nick Templeman was employed by himself or by the Duncan Swim Team from August 1, 1996 to August 15, 1996. He seeks remedy by requesting that the Duncan Swim Team Society take responsibility for any wages due to Templeman.

**ISSUE TO BE DECIDED**

Whether Clarke is responsible for wages owing to Templeman for work performed form August 1 through 15, 1996?

**FACTS**

- Clarke had a contract with the Duncan Swim Team Society to provide coaches and supervision for the swim team during the time in question.
- Clarke had an oral contract with Templeman to provide assistant coaching services for the swim team until August 15, 1996. Templeman was assigned to serve as Assistant Head Coach to the B Group swimmers. He assumed Head Coach responsibilities when Clarke was not there. The B Group training program ended approximately July 14, 1996.
- Clarke did not assign Templeman to the Summer Program but was aware that he continued to work with the Summer Program.
- Templeman also did volunteer coaching for the Off Season weight training program . He did not receive any direction from the Duncan Swim Team executive to participate in this program or in the Summer Program.

Minutes of the Duncan Swim Team Board of Directors, dated July 3, 1996, include the following motion that was passed:

“The board will provide Bruce with a structure to continue until AAA”s, after which time he will not be required, unless requested to be on deck. His principle duties will be to wind up the season administratively, organize the awards, continue to remunerate the assistant coaches.” (Emphasis added)

- Minutes of that July 3, 1996 meeting approve the new contracts for the appointment of the Head Coach and Assistant head coach positions for the coming year. A July 3, 1996 notice was later posted to notify Society members that Mr. Templeman would be filling the Head Coach position for the Duncan Swim Team effective September 1, 1996.
- Clarke received his monthly funding for August 1996.
- Clarke did not advise Templeman that he was terminated or laid off at the end of July 1996.
- Clarke did not pay Templeman his wages for the period August 1st to 15th, 1996.

## **ANALYSIS**

Clarke argues that Templeman’s work for him finished with the end of training for Group B Swimmers. He paid him for work done through July 31, 1996. He claims the work done from August 1st through 15th involved an unauthorized assignment that should be on account for the Duncan Swim Team Board of Directors. The evidence indicates that Clarke at no time notified Templeman that his employment was at an end and he did nothing to satisfy himself that the Swim Team had become a new employer of Templeman.. He was aware that Templeman was present at Summer Program Activities during the period in question.

Minutes of the Board of Director’s meeting dated July 3, 1996 confirm that Clark remained responsible for remuneration to assistant coaches. He received payment for his contract from the Society in August.

There has been no evidence or argument to show that the Determination should be varied or canceled.

## **ORDER**

In summary, I order under Section 115 of the Act”, the Determination dated April 08, 1997 be confirmed.

**Niki Buchan  
Adjudicator  
Employment Standards Tribunal**