

**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-

John Robert Dacre  
("Dacre")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/483

**DATE OF HEARING:** September 12th, 1997

**DATE OF DECISION:** October 29, 1997



As noted above, Intercan asserts that Dacre never was in its employ. However, if a settlement agreement was concluded between Intercan and Dacre regarding the latter's vacation pay claim, the issue of Dacre's employment status is not particularly relevant so long as Intercan agreed to pay his unpaid vacation pay. In any event, I am satisfied that Dacre *was*, insofar as the *Act* is concerned, an employee of Intercan.

The evidence with respect to the settlement agreement is not contentious.

According to Dacre, during a telephone conference call between Ken White, the Director's delegate in this matter, Dacre and Koonar (which took place on either May 21st or 22nd, 1997) the parties agreed to settle Dacre's claim upon payment of \$3,600 (*i.e.*, 6% of Dacre's annual \$60,000 salary). When White indicated that it would be inappropriate for him to contact Intercan's controller directly in order to arrange for delivery of the funds, Koonar said that he would attend to that matter. It was agreed that a cheque, made payable to Dacre, would be sent directly to White for subsequent transmittal to Dacre.

After returning from vacation, Dacre telephoned White to inquire about the whereabouts of the funds. White then apparently telephoned Koonar about the matter only to be told that "it was no longer in his hands" and that it was up to Constabaris to authorize payment. I might parenthetically note that at this point in time Koonar held the office of vice-president of Intercan and would appear to have had the legal authority to bind that firm to an agreement of the sort alleged by Dacre. In any event, Intercan failed to deliver the funds and in short order the Determination was issued--the Determination contains no reference whatsoever to the alleged settlement agreement.

Koonar, who was appointed an Intercan vice-president in 1989, did not challenge in any fashion Dacre's evidence regarding the alleged settlement agreement; indeed, Koonar frankly conceded that Dacre's recollection of the events was accurate. Koonar's position was simply that Intercan did not have sufficient records in its possession to justify paying Dacre any vacation pay. For his part, Constabaris' evidence did not touch on the alleged agreement; Constabaris' main point was to assert that Dacre was not employed by Intercan but rather by Lan Can Food Corp., a related company.

Thus, the uncontradicted evidence before me is that the parties--Intercan and Dacre--on either May 21st or 22nd, 1997 reached a settlement with respect to Dacre's vacation pay claim. As such, this agreement represents wages that were payable to Dacre and, accordingly, given the employer's refusal to pay, should have been crystallized into a Determination in favour of Dacre. There is no reason, in fact or in law, to question Koonar's authority to conclude the settlement on behalf of Intercan and thus, in my view, Dacre is entitled to an order reflecting the terms of settlement.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination be varied in the amount of **\$3,600** together with interest to be calculated by the Director in accordance with Section 88 of the *Act*.

**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**