

An appeal

- by -

Terry Bernadette Machan and Carl Joseph Smith operating as The Innovation  
Group Business Management & Financial Services  
("Innovation Group")

- 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.:** 2002/337

**DATE OF DECISION:** October 8, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Terry Bernadette Machan and Carl Joseph Smith operating as The Innovation Group Business Management and Financial Services (“Innovation Group”) of a Determination that was issued on June 17, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Innovation Group had contravened Part 3, Section 17 and Part 5, Section 58 of the *Act* in respect of the employment of four employees, Toni Krantz, Lisa Krantz Korlee Krantz and Melanie Grubb, and ordered Innovation Group to cease contravening and to comply with the *Act* and to pay an amount of \$6,366.44.

The Determination addressed a complaint that the individuals had not been paid wages owed to them by Innovation Group for February 2002.

In this appeal, which was filed on behalf of Innovation Group by Theresa (Terry) Machan, it is argued that Innovation Group should not be responsible for the wages of the four individuals and, in any event, there was possible fraud and conspiracy involved in the operation of the office in which the individuals were employed.

### ISSUE

The issue in this appeal is whether Innovation Group has shown the Determination was wrong in a manner that justifies the intervention of the Tribunal under Section 115 of the *Act*.

### FACTS

The Determination set out the following background information:

Terry Bernadette Machan and Carl Joseph Smith operating as The Innovation Group Business Management and Financial Services, is a tax accounting and bookkeeping business, which is under the jurisdiction of the Act. Lisa Krantz worked from February 11, 1999 to February 26, 2002 as an office manager at the rate of \$13.00 per hour. Korlee Krantz worked from November 9, 2001 to February 26, 2002 as a tax preparer at the rate of \$8.00 per hour. Toni Krantz worked from March 8, 2001 to February 26, 2002 as a bookkeeper at the rate of \$9.00 per hour. Melanie Grubb worked from February 18, 2002 to February 26, 2002 as a tax preparer.

Innovation Group operated under a franchise agreement with Liberty Tax Services Inc. (“Liberty”). Liberty terminated the franchise agreement and took over the operation of the office in which the individuals worked on February 27, 2002. The individuals continued their employment with Liberty.

The Determination notes that Terry Machan did not dispute that the individuals were not paid wages by them for the month of February 2002, but disputed the hours claimed, and that Carl Smith believed the individuals’ claims but did not have the funds to pay the wages owed.

The following findings of fact were made:

The employer failed to produce records to dispute the time sheets kept by the employees. The employer did produce copies of cheques made payable to the employees signed by Lisa Krantz for wages. However, other than the cheques for Korlee Krantz and Toni Krantz's advances, there is no evidence of wages paid for February by Terry Bernadette and Carl Joseph Smith operating as Innovation Group Business Management and Financial Services.

Lisa Krantz had provided payroll records of hours and wages to substantiate the amount of vacation pay that was paid by the employer. Liberty Tax Service also produced a copy of timesheets for February submitted by the employees. All copies are the same.

The employer has been unable to dispute the employees' allegations for outstanding wages and vacation pay.

## **ARGUMENT AND ANALYSIS**

The burden is on Innovation Group, as the appellant, to persuade the Tribunal that the Determination was wrong and justifies the Tribunal's intervention. 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 this appeal Innovation Group has added no information relevant to the merits of the claim by the individuals under the *Act* for wages owing. Specifically, nothing has been provided that indicates the conclusions of fact relating to the calculation amounts owed were wrong in any respect.

The central posture taken by Innovation Group in the appeal is that “. . . if Liberty Tax Service is claiming all the revenue from the Dawson Creek office they should be responsible for covering the wages of the staff . . .”. That argument fails to appreciate that under the *Act* it is the employer who is responsible for the wages of an employee and there is no evidence showing the Director erred in concluding Innovation Group was the employer of the individuals during February 2002 and therefore responsible for their wages. The argument raised by Innovation Group may be relevant in the context of a civil dispute between them and Liberty, but it has no bearing on liabilities under the *Act*.

I have considered the other matters raised in the appeal and do not find any matter that warrants further comment. I agree with the submission of the Director that those allegations do not fall within the jurisdiction of the *Act*. The appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated June 17, 2002 be confirmed in the amount of \$6,366.44, 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**