

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-

Jagger Radiator Ltd.
("Jagger")

and

National Radiator Mfg. Ltd.
("National")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/541

DATE OF DECISION: October 15, 1998

DECISION

OVERVIEW

This is an appeal brought by Jagger Radiator Ltd. (“Jagger”) and National Radiator Mfg. Ltd. (“National”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 22nd, 1998 under file number 076-745 (the “Determination”).

By way of the Determination, the Director’s delegate held that Jagger and National were “associated corporations” as defined by section 95 of the *Act* and thus were both liable for a \$500 monetary penalty issued for failure to produce payroll records. The penalty was issued pursuant to sections 28(b) and 46 of the *Employment Standards Regulation*.

FACTS

On June 12th, 1998 a demand for production of payroll records was sent by certified (registered) mail to each of Jagger and National requesting the production of payroll records for the period March 15th, 1996 to March 15th, 1998 relating to one David Doucette; the records were to be produced at the Port Coquitlam office of the Employment Standards Branch by no later than 2:00 P.M. on June 26th, 1998. The demands were received, according to the Canada Post “Acknowledgement of Receipt”, by each company of June 15th (both Acknowledgements were signed by Vergil Kiselbach who is the “Director of Operations” for both companies).

Apparently, the demands were issued because neither Jagger nor National responded to an earlier request by letter sent out on May 26th, 1998. The relevant records were not produced and the Determination now before me was issued.

In finding that the two firms were associated within section 95 of the *Act* the delegate relied on the following facts:

- the two firms share the same premises;
- employees work for both firms although are usually paid by only one of the two firms;
- the same two individuals are the sole officers of each firm and constitute 2 of the 3 directors of each firm.

In addition, the delegate indicated in her written submission to the Tribunal dated August 27th, 1998 that National obtained virtually all of its parts from Jagger and that National was Jagger’s second largest customer. Both firms have the same registered and records office and, as noted above, Mr. Kiselbach is the “Director of Operations” for each firm. Although each firm’s letterhead shows a separate telephone number, the two firms share a common fax number.

ANALYSIS

Jagger and National's solicitor filed a *pro forma* appeal form on August 14th, 1998 that did not set out the "reasons for appeal". Accordingly, on August 17th, 1998 the Tribunal's registry clerk wrote to the solicitor (this letter was sent by fax) requesting detailed reasons for the appeal which "reasons" were subsequently delivered, by fax, later on that same day in the form of a one-page letter.

This single page letter from the two firms' solicitor does not set out any proper basis for setting aside the determination. The solicitor simply alleges (without *any* supporting evidence or argument) that the two firms are not "associated corporations". Further, the August 17th letter does not deny any of the material facts relating to the delivery of the demands for production of payroll records and the two firms' subsequent failure to produce such records. There is simply *nothing* before me upon which I could reasonably conclude that the Determination was improperly issued; indeed, the only evidence before me overwhelmingly satisfies me that the Determination ought to be confirmed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of \$500.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal