

**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-

Windisch Food Specialities, a division of Daniella  
Investments Inc. and Primo's Mexican Specialities Ltd.

("Windisch Food")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/149

**DATE OF HEARING:** September 29th, 1997

**DATE OF DECISION:** November 21st, 1997

**DECISION**

**APPEARANCES**

Louella Kubbernus &  
Daniel Kubbernus                      for Windisch Food Specialities

Herb Kerntopf                      on his own behalf

No appearance                      for the Director of Employment Standards

**OVERVIEW**

This is an appeal brought by Windisch Food Specialities, a division of Daniella Investments Inc. and Primo's Mexican Specialities Ltd. ("Windisch Food" or the "employer") pursuant to section 112 of the *Employment Standards Act* (the "Act") from a Determination issued by the Director of Employment Standards (the "Director") on February 24th, 1997 under file number ER 68-154 (the "Determination").

The Director determined that Windisch Food owed its former employee, Herb Kerntopf ("Kerntopf"), the sum of \$1,934.52 on account of unpaid wages. The employer's appeal is based on the assertion that it had some sort of wage-sharing agreement with the Insurance Corporation of B.C. ("ICBC") and, pursuant to that agreement, has paid all of the wages that it was obligated to pay to Kerntopf.

The employer's appeal was heard at the Tribunal's offices in Vancouver on September 29th, 1997 at which time I heard testimony from Louella and Daniel Kubbernus, the employer's two principals, and from Kerntopf. The Director did not appear at the appeal hearing.

**FACTS AND ANALYSIS**

The employer is in the business of manufacturing salad dressings and salsa which, in turn, is sold to restaurants. The firm employs about ten people at its Surrey facility.

The evidence before me is that Kerntopf, who had been injured in a motor vehicle accident, was first introduced to the employer via an employment rehabilitation program administered by a firm known as the Cornish Vocational Institute ("Cornish"). The employer says that some three weeks prior to Kerntopf being hired, during a meeting attended by Ms. Lynda Antao (representing Cornish), Louella and Daniel Kubbernus and Kerntopf, the employer was advised that through an ICBC program, Kerntopf could receive up to 50% of his wages directly from ICBC; the employer would be responsible for the balance. This "wage-sharing" agreement would be in place for three

months after which time, if Kerntopf was to continue in Windisch Food's employ, that firm would be solely responsible for his wages.

Windisch Foods agreed to hire Kerntopf and paid him one-half of the agreed hourly wage of \$8.50. Kerntopf's duties included being trained to operate the firm's computer system. Kerntopf commenced his employment on or about September 6th, 1995 and continued until he was injured in another motor vehicle accident in February 1996 at which time he quit. During the period of his employment with Windisch Food, Kerntopf inputted data into the employer's computer system, did some costing analyses, some invoicing and, occasionally, some customer deliveries.

The employer does not dispute that Kerntopf was to receive a total of \$8.50 per hour; nor does the employer dispute the record of hours worked by Kerntopf as set out in the Determination, or indeed, the Director's calculation as to the monies paid by Windisch Food and the unpaid balance due Kerntopf. The employer simply says that it lived up to its agreement with Cornish/ICBC and should not now be obliged to pay the balance which it says is due and owing to Kerntopf from Cornish and/or ICBC.

The short answer to this submission, however, is that under the *Act* Kerntopf was employed by Windisch Foods. The services undertaken by Kerntopf while employed at Windisch Food were rendered for the benefit, and at the direction of, the employer. There is no documentary evidence before me of any sort of "wage-sharing" agreement with ICBC and/or Cornish and Kerntopf and, in any event, even if Windisch Food has some sort of claim for reimbursement, it should pursue ICBC and/or Cornish directly.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter be confirmed as issued in the amount of \$1,934.52 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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