

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 -

Dale Hayter
("Hayter")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 97/554

DATE OF DECISION: October 22, 1997

DECISION

OVERVIEW

This is an appeal by Mr. Dale Hayter (“Hayter”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination issued on June 26, 1997 by a delegate of the Director of Employment Standards (the “Determination”).

The Determination found that Hayter was the sole director of Pan Pacific Paper Products Inc. (“Pan Pacific”) at the time when three other determinations were issued against Pan Pacific. The determinations were issued between August 15, 1996 and December 20, 1996 and found that Pan Pacific owed outstanding wages and length of service compensation to eight individuals who were terminated without cause in March, April and May 1996. Pan Pacific did not appeal the determinations. Pursuant to Section 96(1) of the *Act*, the June 26, 1997 Determination found that Hayter was personally liable for the outstanding wages in the three earlier determinations.

Hayter appealed on the grounds that Pan Pacific was not a successor company to HCD Health Care Diaper Inc., so that his liability should be based on the length of service of the former employees with Pan Pacific.

The appeal was decided on the basis of written submissions from Hayter and a number of the employees named in the 1996 determinations.

ISSUE TO BE DECIDED

The issue in this case is whether Pan Pacific was a successor company to Health Care Diapers.

FACTS

A firm known as HCD Health Care Diaper Inc. and HCD Health Care Diaper Limited Partnership (“Health Care Diaper”) operated in Richmond, B. C. The company had financial difficulties, and in April 1995 Hayter seized all assets of the company. His lawyer, Mr. Ray Bridger, issued a letter on April 27, 1995 announcing that Hayter Drilling Ltd. had seized the assets of Health Care Diaper and that Hayter would start a new diaper manufacturing business, which he would operate from the premises of Health Care Diaper.

Mr. Bridger further stated that Hayter would commit new capital to a “NewCo”, Pan Pacific, and Bill Wilson had been hired as Manager of Operations and Purchasing.

Mr. Wilson informed the Tribunal that Hayter was a director of Health Care Diaper at the time he seized the assets of the company. Furthermore, according to Mr. Wilson, Mr. Bridger told the employees of Health Care Diaper that all wages, holidays and seniority would not be affected by the change. Although the new company was called Pan Pacific Paper Products Inc., it was still under the control of the same numbered company that had owned Health Care Diaper. The name was changed formally to Pan Pacific Paper some time later. Mr. Wilson stated that while he was manager, Hayter was the sole director of the firm. A Pan Pacific payroll change notice issued April 18, 1995 for Mr. Wilson contained the notation "\$4404.10 HP c/f from HCD", presumably meaning that the health plan was carried forward from Health Care Diaper. In April 1996, Mr. Wilson received a note from Hayter referring to his layoff. The note stated that the layoff was temporary and that no severance pay was required because Mr. Wilson's employment had not been terminated. Hayter assured Mr. Wilson that he was attempting to relocate the business.

Five other employees named in the original determinations submitted written statements to the Tribunal. In each case, the employee recalled being told by management at the time of the change from Health Care Diaper to Pan Pacific that their wages, fringe benefits and positions would not be affected. Mr. Brian Lasuite, one of the former employees to whom compensation was due in a 1996 determination, also pointed out that Hayter had owned and operated Health Care Diapers and continued to operate the business under a new name with the same clients, employees and location. Mr. Ravin Prasad, another former employee named in one of the determinations, presented information showing that his payroll number remained unchanged from the commencement of his employment by Health Care Diaper in 1987 through September 1995, when he was employed by Pan Pacific. Mr. Prasad also attached an undated letter of reference from Mr. Wilson stating that he had "worked for Health Care Diaper/Pan Pacific Paper Products from June 1987 until present."

Hayter argued that Pan Pacific was not a successor company to "the predecessor Company." The implication of this argument was that his liability for length of service compensation should be based solely on the employees' service with Pan Pacific.

ANALYSIS

The Tribunal has held in numerous decisions that the party launching an appeal of a determination bears the onus of persuading the adjudicator that the determination in question contains errors of law or fact. In this case, Hayter has not presented any evidence in support of his argument. Nor did he advance any new legal argument in support of his appeal.

Section 97 of the *Act* states:

If all or part of a business or a substantial part of the entire assets of a business is disposed of, the employment of an employee of the business is deemed, for the purposes of this Act, to be continuous and uninterrupted by the disposition.

Section 96(1) of the *Act* states:

A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.

Based on the evidence before me, I conclude that the employees of Pan Pacific were covered by Section 97 of the *Act* at the time of their termination. There was no evidence of any interruption in their employment when Hayter seized the assets of Health Care Diaper and commenced operating as Pan Pacific. Hayter did not contest the application of Section 96(1) of the *Act* in this case, and I found no basis for arguing that it should not apply.

ORDER

For these reasons, the Determination of June 26, 1997 is confirmed.

Mark Thompson
Adjudicator
Employment Standards Tribunal