

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 -

Harbour Gondola Victoria Ltd and
Bertram, Logan & Bertram Holdings Ltd

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE NO.: 97/511

DATE OF HEARING: October 09, 1997

DATE OF DECISION: October 29, 1997

DECISION

APPEARANCES

Ron Corrigan	For the Director
Eric Logan	For himself
Kevin Bertram	by telephone

OVERVIEW

This is an appeal by Harbour Gondola Victoria Ltd ("Harbour Gondola") pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination (File No. 063-575) dated June 26, 1997 by the Director of Employment Standards (the "Director").

The Determination found that Kristi-Lynne Ross ("Ross") was an employee of Harbour Gondola and had not been paid for three days of training in May, 1996. The Determination also found that Peter H. Martin was an employee of Harbour Gondola and that he had not been paid all of his wages during the period of June 2 through July 5, 1996.

The Determination also found that Harbour Gondola and Bertram, Logan and Bertram Holdings Ltd were associated companies within the meaning of Section 95 of the *Act*.

Harbour Gondola has appealed on the basis that their manager, Eric Logan, had paid all the employees in cash and that no monies were due and payable to either employee. The companies also appealed the Section 95 determination.

The Appeal was filed on July 18, 1997 but, prior to that date, on July 04, 1997, the Director's delegate had issued a Variation of the Determination pursuant to the Director's authority provided in Section 86 of the *Act*. The variation confirmed the amount owing to Ross but deleted any amount owed to Martin because he had successfully sued in Small Claims Court and had received a judgment in his favour.

The Appellants did not have notice of the variation at the time they filed their appeal.

ISSUES TO BE DECIDED

The issues to be decided in this case are:

1. Whether the variation is effective despite the appeal process;
2. Whether wages are owed to Ross for training;
3. Whether the Companies are associated within the meaning of Section 95.

FACTS

One Notice of Appeal in this case was hand-written by Bertram and signed by him in the name of himself and on behalf of one of the companies, Harbour Gondola. Another notice of Appeal was filed by a Kenneth Rusnak, Barrister and Solicitor, on behalf of Harbour Gondola and BLB.

However at the Hearing no-one appeared on behalf of either company. Bertram appeared by telephone to give evidence on behalf of the companies but stated that he no longer had any interest in either of the appellant companies and was not an authorised agent for either.

Bertram did wish to give evidence on behalf of the Appellants and as he was calling long distance I heard his evidence and he was cross examined by Logan and the Director's delegate.

Bertram's evidence was that Logan was responsible for paying Ross and Logan had assured the Company that he had done so but that Logan had left the Company records in such disarray it was impossible to establish for sure whether Ross had been paid.

ANALYSIS

An Appeal under S.112 of the *Act* is not a trial *de novo* but the process is intended to be flexible to ensure fairness and efficiency. I decided to admit the evidence of Bertram in light of the fact that Logan may not have been as forthcoming with the Director's delegate as he might have been in terms of supplying the address and phone number for Bertram to the delegate.

However, as no representative of either of the corporate appellants appeared, I have no evidence upon which to depart from the finding of the Director's delegate that the two companies are associated companies having common direction and control to come within the provisions of Section 95 of the *Act*. Based on the evidence the finding of Director's delegate was proper.

It is the Company's obligation to maintain proper records and to ensure payment of wages to all employees. It is no defence for the Company to blame it's manager for incompetence. There was nothing in the evidence before me that would persuade me to cancel or vary the Determination in relation to the wages owed to Ross.

It is my opinion that the Director's variation of the Determination, completed but not served prior to the filing of the notice of Appeal, is valid and effective. Therefore the original Determination has been varied to delete any monies owed to Martin and to confirm the amount owing to Kristi-Lynne Ross as \$206.21 plus any accrued interest.

ORDER

I order, under Section 115 of the *Act*, that the Determination, as varied by the Director on July 4, 1997, is confirmed.

John Orr
Adjudicator
Employment Standards Tribunal