

**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 -

Mark L.A. Caplin operating as PWV Services  
("Caplin")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** April D. Katz

**FILE No.:** 2000/667

**DATE OF HEARING:** November 27, 2000

**DATE OF DECISION:** December 19, 2000

**DECISION**

**APPEARANCES:**

Mark Caplin and Ken Waters

on behalf of Mark L.A. Caplin

**OVERVIEW**

The Appellant, Mark L.A. Caplin operating as PWV Services, (“Caplin”), appealed the finding that George Makow, (“Makow”), was an employee of PWV Services in the Director of Employment Standards’ Determination issued on August 30, 2000.

**ISSUE**

Did the Director error in finding that Makow was an employee of PWV?

**ARGUMENT**

Caplin’s submitted that Makow was his partner in a new business venture, which operated for less than 4 weeks due to Makow’s dubious business practices. Makow was never an employee of the business and therefore was not entitled to wages.

**THE FACTS**

In early January 2000 Makow approached a mutual friend of Caplin’s and Makow’s when Caplin was visiting. Makow talked about an excellent business opportunity he had salvaging scrap metal and picking up tires for recycling. He indicated that he was insolvent and could not carry on the business under his own name and needed a partner. Caplin asked what was involved and agreed to put his name forward for the new venture with the understanding that when Makow was solvent in August 2000 he would be a full partner.

Caplin completed the business documentation on January 16, 2000. Makow indicated that he had all the customer lists, book keeping equipment and computer and computer programs necessary to run the business. Caplin hired a driver and paid the salary of the office receptionist. Caplin received the cheques payable to PWV Services and Makow collected all the cash accounts. There were 7 or 8 cash accounts. Caplin never learned what income was derived from these accounts. Caplin learned that Makow was working for a competitor while apparently representing their partnership in January 2000. Caplin asked a number of questions and found out that the business was not viable because of debts and reputation of the competitor Makow represented.

Makow closed the other business office and took all the business records of both businesses home. The other business was evicted for non-payment of rent. In January Makow left over 4000 tires in a yard that Caplin had to remove and relocate without compensation. The tire

recycling depot in Vancouver refused to take any tires from Makow because of outstanding debts in previous dealings.

Makow made a WCB claim, which was denied.

In February, Makow solicited a proposal for lease from a realtor on behalf of PWV Services using the name "Chuck". There was no Chuck associated with the business.

The claim for salary came as a complete surprise to Caplin because Makow had denied any interest in an income and was only interested in an interest in the business.

## **ANALYSIS**

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the evidence from the appellant must demonstrate some error in the Determination, either in the facts accepted, the factual conclusions reached or in the Director's analysis of the applicable law.

The appellant's position is that complainant, Makow, was his business partner not his employee.

The Tribunal has consistently held that partners are not entitled unpaid wage claims *Re Dunn* BCEST #D466/00, Swetnam (BC EST #D231/96); Caba Mexican Restaurants Ltd. (BC EST #D370/96); Super Cat International Enterprises Ltd. (BC EST #D483/98. The definition of employee under the *Employment Standards Act*, the *Act*, is broad and should be interpreted liberally pursuant to section 8 of *Interpretation Act*. The nature of the relationship is a question of fact.

The factual question is whether or not Makow was an employee of Caplin's. The Delegate relied on representations from Makow that he noted hours of work for the company on a calendar. The period of employment he claimed for extended from January 17, 2000 to April 2000. The Delegate allowed the claim until February 9, 2000. While other employees of the business were paid during this period Makow was not paid. Makow kept the cash receipts for the business during this period and felt no obligation to account for them.

The business was not incorporated. Partners are jointly liable for the expenses and able to share in profits. Makow did not contribute financially to the expenses. He contributed his expertise. There were no profits to share.

Based on the facts before me I find that Makow was Caplin's partner not his employee.

## **CONCLUSION**

Based on the finding that Makow was a partner and not an employee I find no basis on which Makow was entitled to wages under the *Act*. Having concluded that no wages are payable I cancel the Determination dated August 30, 2000.

**ORDER**

Pursuant to section 115 (1)(a) the Determination is cancelled.

***April D. Katz***

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**April D. Katz  
Adjudicator  
Employment Standards Tribunal**