



An appeal

- by -

Duncan M. Anderson Director/ Officer of Anderson's Engineering Ltd.  
(“Anderson”)

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 2001/470

**DATE OF HEARING:** September 21, 2001

**DATE OF DECISION:** October 3, 2001

## DECISION

### APPEARANCES:

James G. Trant, Barrister & Solicitor

for 444983 B.C. Ltd.

Kevin Molnar, I.R.O.

for the Director of Employment Standards

### OVERVIEW

This is an appeal filed by Duncan M. Anderson ( the “Anderson”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on June 1st, 2001 (the “Determination”). This appeal was filed concurrently with an appeal filed by 444983 B.C. Ltd. of a separate determination issued on May 30th, 2001.

The Determination that is the subject of the instant appeal was issued against Anderson pursuant to section 96(1) of the *Act* which provides as follows:

#### **Corporate officer’s liability for unpaid wages**

96. (1) 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.

By way of the Determination, Anderson, as a director and officer of Anderson’s Engineering Ltd. (“Anderson’s Engineering”), was ordered to pay the sum of \$3,280.76 on account of unpaid vacation pay and recovery of unremitted union dues. The amounts set out in the Determination payable to five former employees of Anderson’s Engineering total \$3,164.43; I presume the balance represents interest payable pursuant to section 88 of the *Act*.

The employees’ employer of record, Anderson’s Engineering, entered bankruptcy on or about November 28th, 2000; there is no dispute that Anderson was a principal of that latter firm being its sole director and officer.

This appeal, together with the appeal of the determination issued against Anderson’s Engineering and 444983 B.C. Ltd., was heard at the Tribunal’s offices in Vancouver on September 21st, 2001. Mr. Trant appeared as counsel for both the numbered company (the sole appellant in E.S.T. File No. 2001/469) and Mr. Anderson (the appellant in the instant appeal). These reasons for decision address only Mr. Anderson’s appeal; I have issued, concurrent with this decision, separate reasons for decision in the appeal filed by the numbered company.

Although Mr. Anderson and the Director were represented at the appeal hearing, none of the five complainant employees, despite being given notice of the appeal hearing, attended the appeal

hearing. Neither Mr. Anderson nor the Director submitted any *viva voce* evidence although each made extensive oral submissions that supplemented their previously-filed written submissions. I also have before me some brief written submissions from some of the employees.

## ISSUES ON APPEAL

In a letter dated June 20th, 2001, appended to its notice of appeal, legal counsel for the appellant set out the following reasons for appeal (which address both this appeal and the appeal filed by 444983 B.C. Ltd.):

It is respectfully submitted that the Director erred in the following respects.

1. Failing to abide by principles of natural justice by neglecting and/or refusing to provide particulars of the Complainants' claims sufficient to allow the Appellants to answer the case against them.
2. Failing to disclose the information in his possession relating to the Complainants' claims.
3. Abusing his discretion by acting on inadequate material and without sufficient evidence.
4. Failing to properly investigate the Complainants' claims and failing to conduct a hearing to receive evidence on unclear or contradictory information.
5. Making errors on the face of the record both of law and mixed fact and law in interpreting the limited material received by him.

## FINDINGS AND ANALYSIS

I have addressed the above grounds of appeal in my reasons for decision issued in the numbered company's appeal. Although I am satisfied that the delegate fully complied with section 77 of the *Act*, there is a *bona fide* dispute about whether or not the employees were, in fact, paid their accrued vacation pay and whether the union dues in question were actually remitted.

I have before me a letter from Ms. Wiens, Anderson's Engineering's former office manager and a complainant who was awarded compensation under the corporate determination. She maintains that the employees' accrued vacation pay was paid on their last pay cheque and that their union dues were properly remitted to the union. She also says that Anderson's Engineering's payroll records did not reflect these payments because her employment was terminated (due to the company's bankruptcy) prior to her updating the employer's payroll records.

I am unable to determine, based on the information before me, whether the employees received all of their accrued vacation pay or if their union dues were properly remitted to the union. Although it is clear that Mr. Anderson was, at all material times, a director and officer of

Anderson's Engineering, he is, of course, only liable for *unpaid* wages. I ordered, in the numbered company appeal, that the matters relating to unpaid vacation pay and unremitted union dues be referred back to the Director for further investigation and, accordingly, it is appropriate to make a similar order in this appeal.

## **ORDER**

Pursuant to section 115(1)(b) of the *Act* I order that Mr. Anderson's personal liability with respect to the employees' claims for unpaid vacation pay and recovery of unremitted union dues be referred back to the Director for further investigation.

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