

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 -

New Shuttle Inc.
("Morgan")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/020 & 2000/021

DATE OF HEARING: November 30, 2000

DATE OF DECISION: January 02, 2001

DECISION

APPEARANCES:

Phillip John Morgan	on his own behalf
Gerry Aggett	on his own behalf
Ian MacNeill, I.R.O. & Terri L. Walowina, E.S.O.	for the Director of Employment Standards

OVERVIEW

I have before me two appeals both of which were filed by New Shuttle Inc. (“New Shuttle”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). New Shuttle appeals two separate determinations issued against it by delegates of the Director of Employment Standards (the “Director”).

The first appeal (EST File No. 2000/020) concerns a determination issued on December 16th, 1999 under file number ER 93623 pursuant to which New Shuttle was ordered to pay its former employee, Gerry Aggett (“Aggett”), the sum of \$18,563.16 on account of unpaid wages (principally overtime wages) and interest. I shall refer this latter determination as the “Aggett Determination”.

The second appeal (EST File No. 2000/021) concerns another determination, also issued on December 16th, 1999 under file number ER 93623, pursuant to which the Director of Employment Standards levied a \$300 monetary penalty pursuant to the provisions of section 98 of the *Act* and section 29 of the *Employment Standards Regulation*. I shall refer to this latter determination as the “Penalty Determination”.

ISSUES ON APPEAL

The appeal documents relating to the Aggett Determination raise a number of issues, some of which I do not have the jurisdiction to address (*e.g.*, whether or not Aggett received social assistance while employed by New Shuttle). New Shuttle’s principal concern with respect to the Aggett Determination relates to the number of hours worked by Aggett and the wages actually paid to him by New Shuttle. With respect to the Penalty Determination, New Shuttle says that only a \$0 penalty should have been levied.

FINDINGS AND ANALYSIS

These two appeals--together with two related appeals concerning two section 96 determinations (corporate director/officer liability for unpaid wages) issued against Phillip John Morgan--were scheduled to be heard together in Nanaimo on November 30th, 2000. Mr. Aggett was in

attendance as were two Director's delegates. Mr. Morgan appeared on his own behalf and solely with respect to the two section 96 determinations (my reasons with respect to those two appeals are being issued separately under BC EST Decision No. #D543/00). Mr. Morgan specifically advised me at the appeal hearing that he was not appearing on behalf of New Shuttle nor was he authorized to speak on that firm's behalf.

Mr. Morgan is a former director and officer of New Shuttle and, indeed, prepared and signed the two appeal notices (and submitted certain written submissions to the Tribunal) filed by New Shuttle in this matter. However, I am advised by Mr. Morgan that he resigned his office and directorship on August 25th, 2000 and, as noted above, was not authorized by New Shuttle to make submissions or testify on its behalf at the appeal hearing.

Accordingly, there being no evidence--such as, say, payroll records or cancelled cheques--before me to show that the Aggett Determination was incorrect, I dismissed, as abandoned, New Shuttle's appeal of the Aggett Determination.

With respect to the Penalty Determination, subsequent to appeal hearing, I was advised by the Director's delegate that the Director had "withdrawn" this latter determination. However, in light of the Tribunal's decision in *Devonshire Cream Ltd.* (B.C.E.S.T. Decision No. D122/97), the Director cannot act unilaterally under section 86 of the *Act* once an appeal has been filed; thus the proposed cancellation of the section 96 Determination requires the Tribunal's consent. Nevertheless, I do not see any compelling reason why the Penalty Determination ought not to be cancelled.

ORDERS

Pursuant to section 115(1)(a) of the *Act*, I order that the Aggett Determination be confirmed as issued in the amount of **\$18,563.16** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Pursuant to section 115(1)(a) of the *Act*, I order that the Penalty Determination be cancelled.

KENNETH WM. THORNICROFT

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