

**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 -

Gus Holdings Ltd.  
("Gus Holdings")

-and-

478450 B.C. Ltd. operating as ABK Enterprises  
("ABK Enterprises")

-and-

G. & R. Singh & Sons Trucking Ltd.  
("G. & R.")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No:** 1999/637

**DATE OF DECISION:** December 21, 1999

## DECISION

### OVERVIEW

This is an appeal filed by Bhajneek K. Singh--apparently on behalf of Gus Holdings Ltd. ("Gus Holdings"), 478450 B.C. Ltd. operating as ABK Enterprises

("ABK Enterprises") and G. & R. Singh & Sons Ltd. ("G. & R.")--pursuant to section 112 of the *Employment Standards Act* (the "Act"). I shall refer to the three corporations collectively as the "appellants".

The appellants appeal a Determination issued by a delegate of the Director of Employment Standards (the "Director") on September 29th, 1999 under file number ER 92-676 (the "Determination") pursuant to which the delegate determined that the appellants were jointly and severally liable, by reason of section 95 of the *Act*, for \$4,883.76 in unpaid wages (including overtime pay and compensation for length of service) and interest owed to a former Gus Holdings/ABK Enterprises employee, Jeff Black ("Black").

### BACKGROUND FACTS

On August 7th, 1998 Black filed an unpaid wage complaint that resulted in the issuance of a determination on April 29th, 1999 for \$4,778.63 against Gus Holdings. This latter determination was never appealed and I understand that Gus Holdings is no longer an operating entity. On July 5th, 1999, the Director issued a Determination for the same amount plus some additional accrued interest against a director and officer of Gus Holdings, namely, Ranjeet Singh; similarly, this determination was not appealed.

Accordingly, there is no longer any issue regarding Black's *entitlement* to unpaid wages and interest--that issue is *res judicata* (*i.e.*, it has been finally determined). The only issue properly before me is whether or not the other two appellants--ABK Enterprises and G. & R.--are equally liable for Black's unpaid wages because the latter two firms are "associated" with Gus Holdings as provided for in section 95 of the *Act*.

Returning to the relevant facts, since no monies were paid under either the April 29th or July 5th determinations, the Director's delegate advised the appellants, in writing, of her intention to treat all three appellants as a single entity pursuant to section 95 of the *Act* which provides as follows:

#### **Associated corporations**

95. If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,

(a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and

(b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

In the absence of a submission from any of the three appellants regarding the propriety of a section 95 declaration, the Determination now before me was issued. I should note that the amount owing under the instant Determination simply reflects the original amount due under the April 29th determination plus additional accrued interest to September 29th, 1999. I should further note that despite the Acting Chair's specific written request (dated October 25th, 1999) that a full and complete written submission with supporting documents be delivered to the Tribunal by no later than November 15th, 1999, none of the appellants chose to make any submission beyond the brief one-page letter (the contents of which are largely irrelevant) that was filed with the Tribunal as an attachment to the original notice of appeal.

#### **ISSUE TO BE DECIDED**

As noted above, there is only one issue properly before me, namely, "Did the delegate err in declaring the three appellants to be 'associated corporations' in accordance with section 95 of the Act?"

#### **ANALYSIS**

The only submission made by the appellants is a one-page letter under the signature of Bhajneek K. Singh, dated October 22nd, 1999, and appended to the notice of appeal. Bhajneek Singh is described as the "appellant" in the notice of appeal but, of course, since he is not named as a party liable for Black's wages in the Determination, Bhajneek Singh has no status to appeal. As previously noted, however, I am accepting his assertion that he is, in fact, appealing on behalf of all three corporations named in the Determination.

The appellants' October 22nd letter contains a number of assertions that stand separate and apart from the issue that is properly before me, namely, the correctness of the section 95 declaration. The *only* submission made by the appellants regarding the application of section 95 is as follows:

"Concerning the issue of whether or not G & R Singh Trucking, 478450 B.C. and a company no longer existing--GUS Holdings Ltd. are associated companies under Section 95 of the Act and jointly responsible for wages owing to Jeff Black, I Bhajneek Singh on behalf of the mentioned parties argue that this is not the case. In the determination issued to Ranjeet Singh April 29, 1999, Jeff Black also acknowledges that GUS Holdings and 478450 B.C. Ltd. are separate companies and not associated. So I ask who's [sic] convenience is it to perceive companies to

be associated when they are not. There is no substantial evidence that can associate the companies of being jointly operating in the trucking industry.”

There is no question about the three appellants being separate companies--clearly they are. However, that is not the point. Indeed, the point of section 95 is to address the very situation raised by the facts of this case--*i.e.*, a single business enterprise operated through a number of separate corporate entities. By way of a section 95 declaration, employees of any one constituent corporation may be considered, for purposes of the *Act*, to be employed by the entire business enterprise.

In my view, a section 95 declaration governing all three appellants was entirely proper given the uncontradicted evidence before the delegate (the very same uncontradicted evidence that is now before me) including, *inter alia*, the following facts:

- all three appellant corporations were involved in the trucking industry;
- responsibility for managing the day-to-day affairs of all three appellant corporations rested with the same individual;
- assets, such as trucks, were transferred from one company to another;
- the directors/officers of all three companies are members of a single family who all share a common mailing address (the Singh family farm); and
- the Singh family farm is where all three appellants' vehicles were stored and from which they were dispatched.

In addition to the foregoing, I note that Bhajneek Singh filed a single appeal on behalf of all three appellants--and purported to act as agent for all three appellants--having taken his instructions from a single individual, Ranjeet K. Singh, who apparently authorized Bhajneek Singh to act on behalf of all three appellants. This latter fact clearly indicates that all three firms are subject to common direction and control.

The appeal is dismissed.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$4,883.76**, together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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