

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 -

Doris Merrill Nelson
("Nelson")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/683

DATE OF DECISION: December 19, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Doris Merrill Nelson (“Nelson”) of a Determination which was issued on October 3, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that the Nelson was not an employee of Shao Hsiung Enterprises Ltd. for the purposes of the *Act* and dismissed her complaint.

Nelson, through her representative, Robert H. Nelson, disagrees with that conclusion. In the appeal, Robert H. Nelson also says:

Doris Merrill Nelson . . . remains under the care of Dr. Jim Emslie and we request that you make a decision on the appeal based solely on written submissions attached . . .

The Tribunal has concluded that an oral hearing is not required in order to address this appeal.

ISSUE

The issue raised by this appeal is whether Nelson has shown the conclusion in the Determination, that she was not an employee of Shao Hsiung Enterprises Ltd. for the purposes of the *Act*, was wrong.

FACTS

The Director made the following findings of fact:

Shao Hsiung Enterprises Ltd. operating as Best Western Kings Inn employed Nelson’s Home and Auto Depot Inc. to provide bookkeeping and accounting services. All contracts for bookkeeping and accounting services were between Shao Hsiung Enterprises Ltd. operating as Best Western Kings Inn and Nelson’s Home and Auto Depot Inc. (and its’ predecessors). The contracts specify the services to be provided and do not mention Nelson by name. R. Nelson on behalf of Nelson’s Home and Auto Depot Inc. signed the contracts. The sole director and officer of Nelson’s Home and Auto Depot Inc. is Robert Hannes Nelson. All payments for the bookkeeping and accounting services provided by Nelson were paid directly to Nelson’s Home and Auto Depot Inc.

During the investigation of the complaint, the Director had no personal contact with Nelson. Throughout the investigation, she was represented by her husband, Robert Hannes Nelson. Nelson did not participate fully in the investigation of her complaint. The Determination noted:

The delegate made several attempts to speak with Nelson in an effort to gain further information with respect to her complaint, but telephone messages were not returned. A meeting scheduled between the delegate, Nelson and R. Nelson did not take place, as the complainant and her representative did not appear.

There was reference in the Determination to an ongoing dispute under the *Income Tax Act* between Nelson and her husband and the Canada Customs & Revenue Agency (“CCRA”) and that Nelson had stated the CCRA found her to be an employee. In response to that assertion, the Determination noted:

The complainant’s statement that CCRA had found her to be an employee was not supported by factual documentation. Nevertheless, the findings of another jurisdiction do not have impact on a decision concerning a complaint filed under the *Employment Standards Act*.

The appeal provides, and relies, on the following information:

Director Hi-Liang Hung admitted that Doris Merrill Nelson was an employee when served with a REQUIREMENT TO PAY by Revenue Canada (see page 1) and then issuing five cheques . . . by THIRD PARTY REMITTANCE FORM TO REVENUE CANADA (see pages 2 - 11)

This information was considered by the Director during the investigation.

ARGUMENT AND ANALYSIS

The reasons for appeal given by Nelson consist of nothing more than four points, each stating in a different way that Nelson was an employee of Shao Hsiung Enterprises Ltd. and that the Determination was wrong to conclude otherwise. In respect of the material filed with the appeal, I agree with the comment of the Director in reply to the appeal that:

It is not clear how this evidence supports the appellant’s position that Nelson was an employee of Shao Hsiung Enterprises Ltd. operating as Best Western Kings Inn. The Requirement to Pay appears to indicate that Nelson owed money to Revenue Canada and that Revenue Canada had reason to believe that Shao Hsiung Enterprises Ltd. operating as Best Western Kings Inn owed money to Nelson.

The burden is on Nelson in this appeal to persuade me that the Determination is wrong. She has failed to do so and the appeal must be dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination, dated October 3, 2000 be confirmed.

David B. Stevenson

David B. Stevenson
Adjudicator
Employment Standards Tribunal