

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 -

Westside Motor Sports Inc.
("Westside")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE No.: 2000/641

DATE OF DECISION: December 19, 2000

DECISION

OVERVIEW

This is an appeal by of a Determination, dated September 1, 2000. In the notice of appeal, and submissions Westside Motor Sports Inc. (“Westside or employer”) did not raise any issue concerning errors made by the Delegate in the determination. The employer filed the appeal because it had an outstanding claim against the employee, for credit advanced to the employee and purchases made by the employee during the term of employment. The employer did not have any assignment in writing. This appeal was dismissed as frivolous and lacking in good faith as it did not disclose any issue within the jurisdiction of the Tribunal.

FACTS

Pierre Martel was an employee of Westside Motor Sports Inc. between July 19, 1999 and February 25, 2000. It is unnecessary to go into the facts in this matter in great detail. I only recite those facts necessary to dispose of this appeal. The employer alleges that the employee charged goods with its consent in the amount of \$3,722.22 and that the employee’s account was owing at the date of termination. The employer extended credit to the employee without taking a written assignment under s. 22(4) of the *Act*. At termination the employer refused to pay wages owing because of the outstanding account. It also resisted claims for compensation for length of service, overtime, and statutory holiday pay and vacation pay. On September 1, 2000 the Delegate issued a Determination and found that Westside was obliged to pay to Pierre Martel the sum of \$3,243.22.

The sole grounds for appeal advanced is that Westside does not agree that it should have to pay the amount set out in the Determination until the Small Claims Court rules on its claim against Martel for charges that Martel incurred for sporting goods equipment.

ISSUE

Does the notice of appeal disclose any justiciable issue or is it a frivolous appeal?

ANALYSIS

In an appeal under the *Act* the burden is on the appellant, in this case the employer, to demonstrate an error in the determination such that I should vary or cancel the determination. In this case the employer has raised no allegation that the Delegate erred in the Determination. There are no grounds for the appeal, and the appeal appears to have been filed merely in the hope of delay so that a provincial court judge could rule on a claim against the employee for charges the employer permitted the employee to make.

The fact that the employer may have some claim against the employee, outside of the *Act*, is not a reason for filing an appeal. The filing of appeal does not operate as a “stay of proceedings” in

respect of a Determination. If an employer extends credit to an employee, and fails to obtain an assignment to pay, the employer must proceed to establish his debt as against the alleged debtor in the proper forum, which is a court.

I do not have jurisdiction to rule on the “debt” issue, and I make no comment on this claim by the employer. An appeal which does not challenge the facts found or the reasons given in a Determination is a frivolous appeal, which is also lacking in good faith. This appeal is a frivolous appeal, lacking in good faith, within the meaning of s. 114(b) of the *Act* as it does not disclose any allegation of error, or any justiciable issue within the jurisdiction of the Tribunal.

ORDER

Pursuant to section 114 (b) of the *Act*, the Determination dated September 1, 2000 is confirmed.

Paul E. Love

Paul E. Love
Adjudicator
Employment Standards Tribunal