

An appeal

- by -

Atheneon Travel Service Ltd.  
("Atheneon")

- 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:** Lorne D. Collingwood

**FILE No.:** 2002/531

**DATE OF DECISION:** December 23, 2002

## DECISION

### OVERVIEW

Atheneon Travel Service Ltd. (“Atheneon” or “the Appellant”) appealed, pursuant to section 112 of the *Employment Standards Act* (“the Act”), a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 20, 2002. The Determination is that Iryna Sochynska was Atheneon’s employee, not an independent contractor, and that she is, as such, covered by the Act. The Determination went on to order that Atheneon pay Sochynska the minimum wage, and other wages, a total of \$6,851.68, vacation pay and interest included.

Atheneon, on appeal, claimed that the employee did not work as set out in the Determination. According to the Appellant, the employment began on the April 3, 2000, not March 13, 2000, and the employee stopped working Saturdays in September, 2000, not December, 2000. Atheneon also claimed that the delegate should have deducted an hour for lunch, each day, and at least another two hours for reason of personal telephone calls made by the employee. Finally, Atheneon claimed that the employee should not be awarded pay for holidays that are not statutory holidays, or time spent with a realtor or time spent training.

The task of deciding the appeal fell to me and in *Atheneon Travel Service Ltd.*, BCEST No. D345/02, I confirmed the Determination in all respects but one, the decision that the employee worked each and every Saturday until December, 2000. I could not find evidence to support that particular decision. The evidence before me was that there was not any Saturday work after October 1, 2000 and the Determination was varied, therefore, in that one respect. It was left to the Director to recalculate the amount owed.

Atheneon was not satisfied with my decision and it requested that it be reconsidered. That request was assigned to another of the Tribunal’s Adjudicators. The Adjudicator found that the Appellant had failed to show an error which warrants reconsideration: The Appellant merely appeared to be requesting a re-weighting of the evidence that was considered on appeal (*Atheneon Travel Service Ltd.*, BCEST No. RD457/02).

A delegate of the Director was in due course assigned the task of recalculating the Determination so that it reflected the decision that the Saturday work ended October 1, 2000. The delegate has now reported back to the Tribunal and advises that the total amount of wages earned by the employee is \$20,187.90, not \$21,690.90 and that the employee is owed \$5,955.04, not \$6,851.68, vacation pay and interest included.

The delegate’s report was sent to the parties and submissions were invited. Atheneon has responded to the request for submissions but it does not understand or it ignores the fact that there is nothing to decide at this point except a single matter which goes to quantum. Its submission does not take issue with the delegate’s calculations but is to do with decided matters. The Determination as amended is therefore confirmed.

## THE ISSUES

The Appellant at this point may make submissions on the matter of whether, in recalculating the amount of wages owed, the Director has properly taken into account the decision that the employee did not work any Saturdays after October 1, 2000.

In *Atheneon Travel Service Ltd.*, BCEST No. D345/02, the Determination, including the amount of the Determination, was confirmed in all respects but the matter of the Saturday work. That decision is now final in that the Tribunal has dismissed the Appellant's request for reconsideration (*Atheneon Travel Service Ltd.*, BCEST No. RD457/02). I will not address, therefore, what is said to be a need for detailed calculations, the matter of what is the employee's first day of work, the matter of whether the employee is entitled to be paid for training, and/or the matter of whether the employee worked 5 hours a day. Those matters have been decided. They are not matters which may be revisited.

## FACTS AND ANALYSIS

There is at this point only one final matter to decide and the Appellant has had nothing to say in regard to the issue.

The Determination was upheld in all respects but the matter of whether there was Saturday work after October 1, 2000. In other words, the decision to award the employee \$6,851.68 has been upheld except for a need to subtract pay awarded for Saturday work after October 1. It is only that latter matter which was referred back to the Director.

A delegate of the Director has now recalculated the Determination. He has produced detailed calculations which show that he has deducted the amount of pay awarded for all work on Saturdays after the 1<sup>st</sup> of October, 2000, a total of 13 Saturdays (letter dated November 13, 2002). The delegate has also reduced the amount of vacation pay which is awarded the employee, as he should, it being a percentage of the total amount earned.

The Appellant has been invited to review this new set of calculations. The Appellant has responded to that invitation but it does not complain about the amount of the deduction in wages or vacation pay. The Appellant wants to revisit matters which were decided in *Atheneon Travel Service Ltd.*, BCEST No. D345/02. It appears that the Appellant does not understand or chooses to ignore the fact that there is nothing to decide at this point except the amount by which the Determination should be reduced because of the decision that the employee did not work Saturdays after October 1.

In that there is at this point only one final matter to decide and the Appellant has had nothing to say in regard to the issue, I must confirm the Determination as amended by letter dated November 13, 2002.

**ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination issued on March 20, 2002 and amended by letter dated November 13, 2002, be varied. It is \$5,955.04 that Atheneon Travel Service Ltd. must pay Iryna Sochynska and to that amount I add whatever further interest has accrued pursuant to section 88 of the *Act*.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**