

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 -

William Henry Rein, Director of Bertrand Holdings Inc.
("Rein")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 97/712

DATE OF DECISION: December 4, 1997

DECISION

OVERVIEW

The appeal is by William Henry Rein, Director of Bertrand Holdings Inc. (“Rein”) under section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”) which is dated September 5, 1997. The Determination is that Diana Loeppky and Moss Canonico, former employees of Rein operating as Bertrand Holdings Inc., are owed wages and vacation pay.

ISSUES TO BE DECIDED

At issue are the Director’s conclusions in respect to the amount of moneys owed. Rein appeals the Determination and says that additional moneys were paid to both Loeppky and Canonico and he alleges that they kept the proceeds of the sale of an RCA Satellite System.

Rein presents nothing in support of his allegations. That raises another issue. Is the complete lack of support for the appeal not reason to dismiss it?

FACTS

William Rein operated as Bertrand Holdings Inc., an electronics repair shop. Diana Loeppky worked as his Administrative Assistant from January 15, 1996 to February 28, 1997 when the business closed.

Moss Canonico is an Electronics Technician and he worked for Rein from some time in June, 1995 to February 28, 1997.

Complaints by Loeppky and Canonico led to an investigation by a delegate of the Director and a Determination which calls for Rein to pay Loeppky \$546.15 in wages and vacation pay, plus interest, and Canonico \$1,030.00 in wages and vacation pay, plus interest. In issuing the Determination, the delegate was forced to rely on records of the employees. Rein had alleged that he had paid all wages and other moneys but he provided no proof of that. Rein was also ordered to produce payroll records through a Demand for Employer Records but never provided the required records.

On filing his appeal, Rein attached a letter which argued that the Director's delegate failed to consider a payment of \$200 to Loeppky. It goes on to say that Canonico took several days of vacation and is owed only \$170.01 in vacation pay, and that he is owed only \$250 in wages. On filing his appeal, Rein presented nothing in support of his allegations.

Rein on appeal alleges that the employees "pocketed" the proceeds from the sale of an RCA Satellite System. He also alleges that the unit is worth more than what should be the amount of the Determination. He suggests that he can prove his allegations but he did not do that at the time of filing his appeal. He did offer to forget the whole matter if the employees would drop their claims for wages and vacation pay.

On receiving the appeal, the Tribunal's Registrar sent her usual request for written submissions. It states that the appeal "would be decided by an Adjudicator" and informed Rein that the "Adjudicator may decide this appeal based solely on written submissions ...". Nothing further was heard from Rein. It remains that he has provided nothing in support of his allegations.

ANALYSIS

The appeal goes entirely to the facts as they have been found by the Director's delegate. What was paid and what remains to be paid to the employees.

Rein alleges that the Determination is wrong in that it fails to account for additional days of vacation which were taken, for additional wages which were paid, and for moneys that are said to have been pocketed by the employees but then presents nothing in support of his allegations. The fact that the appeal consists entirely of unfounded accusations leads me to conclude that it is an appeal without substance. There is neither evidence, nor argument, challenging the material points of the Determination. As Rein presents his appeal it is one with no prospect of succeeding. In my view the appeal is frivolous.

Where there is an appeal but the appellant presents nothing in support of the appeal, one has to wonder whether it has been brought on in good faith. Rein complains of the delegate's assessment of the facts but then presents not a scrap of evidence which is contrary to the Determination. That demonstrates to me that his appeal was not brought in good faith and I conclude that it should be dismissed for that reason.

Where an appeal is frivolous, vexatious or trivial, or is not brought in good faith, section 114 (1) (c) of the *Act* allows the Tribunal to dismiss it without a hearing. I have concluded that the appeal by Rein is not in good faith and frivolous. I am dismissing it for those reasons.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination DDET dated September 5, 1997 be confirmed. Diana Loeppky is owed \$546.15 in wages and vacation pay, plus interest on that amount. Moss Canonico is owed \$1,030.00 in wages and vacation pay, plus interest on that amount.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

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