

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 -

James Robert Wilkinson operating as
Waterwise Water Company
and
James Robert Wilkinson, an officer/director of
Waterwise Water Company Inc.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No: 97/665

DATE OF DECISION: December 16, 1997

DECISION

OVERVIEW

This is an appeal by James Robert Wilkinson, operating as Waterwise Water Company, and also in his capacity as an officer and director of Waterwise Water Company Inc. pursuant to Section 112 of the Employment Standards Act (the "Act") from a Determination (File No. 076051) dated April 14, 1997 and a further Determination dated August 08, 1997 by the Director of Employment Standards (the "Director").

On November 22, 1996 the Director issued a Determination that found that Waterwise Water Company Inc.(the corporation) owed wages in the amount of \$484.77 to Andreas Adamopoulos (Adamopoulos). This Determination was not appealed but the wages were not paid. On April 14, 1997 the Director issued a further Determination finding James Robert Wilkinson (Wilkinson) liable as an officer/director of the corporation. On April 23, 1997 Wilkinson appealed on the basis that, although he was a director and officer of Waterwise Water Company Inc., the corporation never conducted business and did not employ anyone including Adamopoulos.

On August 08, 1997 the Director issued a further Determination against Wilkinson in his personal capacity operating a business known as Waterwise Water Company finding that Wilkinson owed wages to Adamopoulos which, with interest, now amounted to \$500.56. Wilkinson appealed this third Determination and for the first time in appeal documents raised issues that Adamopoulos was a contractor and not an employee and that the hours claimed were not worked.

ISSUE TO BE DECIDED

The issues to be decided in this case are whether there is any evidence to support the claim by the appellant that Adamopoulos was a contractor and not an employee and whether there is any evidence to support the claim by Wilkinson to refute the hours of work claimed by Adamopoulos.

FACTS

On March 27, 1996 Adamopoulos was offered employment delivering water. The employer, Wilkinson, asked him to work the first two weeks for free in the form of on-the-job training for the job. Adamopoulos commenced the training by accompanying another delivery driver on his deliveries around Victoria. Adamopoulos assisted the other driver, on some occasions drove the truck, and also worked bottling water at the company's warehouse. He was only paid a total of \$85.50.

ANALYSIS

Wilkinson incorporated a company, Waterwise Water Company Inc., to protect the name but claims that he did not operate his business through the corporation. He did however operate his business using the name Waterwise Water Company. The first Determination in favour of Adamopoulos was against the corporation and Wilkinson did not cause the corporation to appeal any of the findings in that Determination. When the Director issued a Determination against him as a director of the corporation Wilkinson still did not dispute that the wages were owed but only that the corporation was not the employer. It was not until a Determination was made against him personally that Wilkinson appealed on the basis that Adamopoulos was a contractor and/or didn't work at all. The employer did not produce any records or evidence to support this bald allegation. In the absence of any evidence to support the appeal it will fail, *Electro Surgeon Inc. v. British Columbia (Director of Employment Standards)* BC EST #D275/97.

This Tribunal has previously held that where a party to a Determination chooses not to file an appeal, the party is not entitled to appeal in another capacity, *Sawers v. British Columbia (Director of Employment Standards)* BC EST #D 174/97. In this case Wilkinson was the employer both in his personal capacity and as an officer of the corporation. He had the operating control of the corporation which failed to appeal the initial Determination. He has failed to make the corporation comply with the Determination and has failed to comply when the order was made against him as a director.

There is nothing in the materials before me that would indicate that the wages are not owed by Wilkinson to Adamopoulos. These appeals seem solely designed to delay or attempt to frustrate the Determinations of the Director. As a result I confirm the Determinations.

ORDER

I order, under Section 115 of the *Act*, that the Determinations are confirmed.

JOHN M. ORR
ADJUDICATOR,
EMPLOYMENT STANDARDS TRIBUNAL