

An appeal

- by -

580988 B.C. Ltd. operating as Yaletown Webwerks
("Webwerks")

- 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: Carol L. Roberts

FILE No.: 2001/644

DATE OF DECISION: November 7, 2001

DECISION

This is a decision based on written submissions by David Desjardins and Thomas Park, directors of 580988 B.C. Ltd, operating as Yaletown Webwerks ("Webwerks"), Chris Hill, Jennifer Cross, Deena Smith, Kelly Raabe and Kim Grecia, and Ivy Hallam, on behalf of the Director of Employment Standards.

OVERVIEW

This is an appeal by Webwerks, pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued September 6, 2001. The Director found that Webwerks contravened Sections 18 (1), 42(5), 58(1)(a) 63(1) and (2)(a) of the Act in failing to pay Ms. Smith, Ms. Raabe, Ms. Cross, Mr. Hill and Ms. Grecia wages, vacation pay, compensation for length of service and overtime wages, and Ordered that Webwerks pay \$12,919.31 in wages and interest to the Director on the employees' behalf.

ISSUE TO BE DECIDED

Whether the Director erred in determining whether compensation was owed to the employees, and if not, whether the amounts determined owing is accurate.

FACTS

Webwerks did not dispute the facts as set out by the Director's delegate.

Ms. Smith, Ms. Cross, Mr. Hill, Ms. Grecia and Ms. Raabe worked for Webwerks, a website design and marketing company, until it closed its doors on January 8, 2001. The employees were notified that they were laid off by telephone on the weekend prior to January 8. All contended that they were laid off without notice, and did not receive length of service compensation. Each complainant had documents from Webwerks showing the amount of wages owed and pay stubs to substantiate their claims.

On June 14, 2001, the delegate issued a Demand for Employer Records. The delegate received no payroll records, although service of the Demand on Webwerks was confirmed. On June 28, 2001, Mr. Desjardins, one of the Directors/Officers of Webwerks, called the delegate and acknowledged that all the employees but Ms. Cross were owed wages. With respect to Ms. Cross, Mr. Desjardins contended that she had violated a non-disclosure agreement, and was not entitled to any compensation.

Following an investigation of the complaints, and in the absence of any payroll records from Webwerks, the delegate concluded that the employees were entitled to wages.

ARGUMENT

Webwerks contends that certain amounts paid to Ms. Smith were not taken into account in the calculations.

No new information or evidence was provided in support of this aspect of the appeal.

Although the letter of appeal does not expressly say as much, I infer that Webwerks disputes the amount determined owing to Mr. Hill on the basis that he could have been dismissed due to a breach of his employment contract, but that information was not discovered until after Mr. Hill was laid off.

No additional evidence or submissions were provided with respect to this allegation.

Webwerks does not now appear to dispute the determination with respect to Ms. Cross, nor does it appear to dispute the amount owed to Ms. Raabe and Ms. Grecia.

The delegate submits that the money paid to Ms. Smith was for vacation pay from August 9, 1999 to November 15, 2000, and that it was taken into account in the determination. The delegate says that the amount was not deducted because that period of vacation pay was paid and not included as wages. Ms. Smith's submissions on this issue echo those of the delegate.

The delegate further states that Webwerks never raised the issue of cause for dismissal of Mr. Hill during the investigation, and that, in the absence of some evidence, cannot now be used to avoid liability. Mr. Hill submits that the allegations are untrue. He claims that he had no knowledge of this allegation in any previous interaction with either of the directors, and that the downloading of any wrongful information was solely in relation to work performed for Webwerks' clients.

Finally, the delegate states that, because Webwerks acknowledged that Ms. Cross' violation of her confidentiality agreement was a mistake, just cause was not an issue.

ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

The appeal appears to be in relation to the amount of wages determined owing to Ms. Smith, and whether or not any wages were owed to Mr. Hill. In the absence of any submissions with respect to the amounts owing Ms. Raabe and Ms. Grecia, and in light of the concession with respect to Ms. Cross, the determination with respect to those employees is therefore confirmed.

There is no evidence to support the allegation that Webwerks had just cause to dismiss Mr. Hill, and I dismiss the appeal in respect to him.

Finally, there was also no evidence supporting the grounds of appeal in respect to Ms. Smith. In the absence of any information establishing that the delegate's findings with respect to the amount owing is in error, I dismiss the appeal in this respect also.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination dated August 14, 2001 be confirmed in the amount of \$12,919.31, plus whatever interest might have accrued since the date of issuance.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal