

An appeal

- by -

594756 B.C. Ltd. operating as Cash Converters
(the "Appellant")

- 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: Wayne R. Carkner

FILE No.: 2001/676

DATE OF DECISION: December 6, 2001

DECISION

This decision is based on written submissions submitted by Ian Robertson, representing the Appellant, and written submissions submitted by the Director.

OVERVIEW

This is an appeal by 594756 B.C. Ltd., operating as Cash Converters, pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination issued by the Director of Employment Standards (the “Director”) on September 5, 2001. The Determination concluded that the Appellant had contravened Section 63 of the *Act* when the business was closed on July 2, 2001. The Determination assessed to the Appellant a remedy for compensation for length of service (“CLOS”), vacation pay and interest, pursuant to Section 88 of the *Act*, to each Respondent the following:

- To Gregory John Woiken -\$647.15
- To Dave Russell - \$1104.54
- To John Fodchuk - \$665.16
- Peggy Jean Gariepy - \$176.20

I note that the bottom line of each calculation in the Determination was shown as “Total Due To Gregory John Woiken” in error and should have identified each specific Respondent. I note that this is an obvious clerical error and find that I have the discretionary power to correct these errors and vary the Determination.

ISSUES

- Should the Respondent be excused from payment of the remedies assessed due to an inability to pay said remedies?
- Was Dave Russell provided notice in lieu of compensation for length of service?

ANALYSIS AND CONCLUSION

Attached to the submission of the Appellant was a letter dated September 17, 2001 signed by Dave Russell (“Russell”). The body of the letter acknowledged that the Appellant had provided Russell with one month’s notice of termination of employment. The Director’s submission stated that the Director’s Delegate had contacted Russell and Russell had confirmed that the Appellant had provided him with one month’s notice of termination of employment and that he wanted to discontinue his claim for CLOS.

Based on this evidence I must conclude that the facts were in error and the Delegate erroneously provided Russell a remedy for CLOS.

The Appellants submission took no issue with the rest of the facts or conclusions contained in the Determination. The only position taken by the Appellant is that he had an inability to pay the damages assessed in the Determination and submitted that the Tribunal should not enforce the Determination. The Appellant submitted that enforcement of the Determination would force a declaration of bankruptcy.

I have sympathy for the Appellant's position. He has made an effort to run a small business and employ people. However, I have no discretionary power to forgive a remedy for an "inability to pay". The "ENFORCEMENT" provisions under Part 11 of the *Act* are mandatory when a contravention of the *Act* has been established.

I therefore must uphold the remedies provided in the Determination with the exception of the remedy awarded to Russell.

CONCLUSIONS

The remedies provided in the Determination for Gregory John Woiken, John Fodchuk and Peggy Jean Gariepy are upheld.

The remedy provided in the Determination for Dave Russell is struck down.

ORDER

Pursuant to Section 115 of the *Act* the Determination dated September 5, 2001 is varied to read:

“Total Due To Gregory John Woiken = \$647.15

“Total Due To John Fodchuk = \$665.16

“Total Due To Peggy Jean Gariepy = \$176.20

All the above are subject to interest accrual pursuant to Section 88 of the *Act*.

The remedy provided for Dave Russell is canceled.

“TOTAL WAGES DUE:” is varied to read “\$1488.51” plus any interest accrual pursuant to Section 88 of the *Act*.

Wayne R. Carkner
Adjudicator
Employment Standards Tribunal