

An appeal

- by -

Ravinder Singh Benipal operating as Harry's Landscaping and Gardening
("Harry's")

- 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.: 2001/697

DATE OF HEARING: December 18, 2001

DATE OF DECISION: January 7, 2002

DECISION

APPEARANCES:

For Ravinder Singh Benipal operating as
Harry's Landscaping and Gardening:

Jagdev Benipal
Ravinder Benipal

On his own behalf:

A. Khangura

OVERVIEW

This is an appeal by Ravinder Singh Benipal operating as Harry's Landscaping and Gardening ("Harry's"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued September 12, 2001. The Director's delegate found that Harry's contravened Section 18(2) of the Act in failing to pay Amarjit Singh Khangura ("Khangura") wages on termination, and Ordered that Harry's pay \$770.08 to the Director on Khangura's behalf.

Harry's claims that Mr. Khangura has been paid in full.

ISSUE TO BE DECIDED

Whether the delegate correctly determined that Mr. Khangura is owed wages for work performed between July 1, 2000 and July 15, 2001.

FACTS

Mr. Khangura worked as a labourer for Harry's, a gardening and landscaping company. Mr. Benipal purchased the company on June 14, 2000, and Mr. Khangura continued his employment with the company until July 15, 2000.

Mr. Benipal first advised the delegate that Mr. Khangura was an employee of the previous owner, and that he did not owe him any money. The delegate sought production of all records relating to Mr. Khangura. Although Mr. Benipal failed to provide records, he provided the delegate with a letter indicating that he had incorporated a company called Harry's Landscaping and Gardening Ltd. on August 30, 2000.

Mr. Khangura provided the delegate with a cheque from Harry's dated July 10, 2000, bearing Mr. Benipal's signature, and advised the delegate that Mr. Benipal was the principal of Harry's. He also provided the delegate with a record of his own hours, including those between July 1 and

July 15, 2000. He advised the delegate that he performed gardening work for Harrys during that time.

The delegate drew an adverse inference from Harry's failure to produce time or payroll records, and, after finding Mr. Khangura's evidence to be more credible than that of Mr. Benipal, concluded, on a balance of probabilities, that Mr. Khangura worked on the days claimed.

ARGUMENT

In his October 1, 2001 letter of appeal, Mr. Benipal argued that the delegate erred in concluding that Mr. Khangura was owed wages. Mr. Benipal stated that Harry's was transferred to him on January 14, 2000, and that Mr. Khangura worked a total of 156.75 hours with the company from June 16, 2000 to July 15, 2000. He contended that the cheque that Harry's issued to Mr. Khangura on July 10 included June's wages as well as an advance on July's wages, and that, because it was in an amount greater than what he owed Mr. Khangura, he was entitled to the difference.

In his submission dated November 18, however, Mr. Benipal stated that "Harry's has not started any business operation. Company was incorporated on August 30, 2000." He submitted that this evidence supported his submission that Mr. Khangura's claim was false.

At the hearing, Mr. Benipal submitted that the delegate did not speak to him to find out his side of the story, and that the cheque issued to Mr. Khangura in July represented wages as well as an advance on July's wages, and in fact, that Mr. Khangura was overpaid.

Mr. Khangura denied that he was paid an advance, and submitted that Mr. Benipal purchased the business from a relative. Mr. Khangura argued that Mr. Benipal and the previous owner agreed that Mr. Benipal would pay him for all of the wages he was entitled to for the month of June, and that he had never been paid for the work he performed in July.

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.

Mr. Benipal's statements to the delegate varied from his submissions to the Tribunal. Mr. Benipal's submissions to the Tribunal also differed from each other. Because Mr. Benipal's command of the English language is limited, the discrepancies in his written submissions might be afforded greater leeway than they might otherwise. However, Mr. Benipal was assisted by an interpreter and his brother at the hearing, and the documentary evidence simply does not support his arguments.

There is no dispute that Mr. Khangura worked for Harry's between June 16, 2000 and July 15, 2000. On July 10, 2000, a cheque bearing Harry's name and address was issued to Mr. Khangura. Mr. Benipal's signature was at the bottom of the cheque. In the "For" line, Mr. Benipal wrote "Pay June 2000". Accompanying the cheque was a statement of wages that indicated that the cheque represented wages for 165 1/2 hours of work from June 1 to June 30, 2000.

There is no dispute that Mr. Benipal purchased Harry's on June 14, and incorporated it as of August 30, 2000. However, in my view, these facts are irrelevant to the issue of whether Mr. Khangura was paid for work in July.

Mr. Benipal would have the Tribunal believe that, because Harry's was not incorporated until August 30, 2000 it did not exist before that time. Alternatively, as Mr. Benipal argued in the hearing, the cheque that was issued on July 10 represented full payment of Mr. Khangura's wages from June 14 to July 15. Mr. Benipal's own documents belie that fact.

There is no evidence to support Mr. Benipal's argument that the cheque represents an advance. Mr. Khangura was never told that the money was in advance, nor does the cheque stub indicate that anywhere. In fact, the wage statement clearly indicates that the cheque is for wages for the month of June. I have reviewed Mr. Khangura's record of hours worked in June. They closely reflect the hours for which he was paid on July 10. There is no evidence Mr. Khangura was paid for work done in July. Mr. Benipal's submissions simply defy credibility.

I find that Mr. Benipal has failed to discharge the burden of establishing that the delegate erred, and dismiss the appeal.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination, dated September 12, 2001, be confirmed.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal