

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 -

Shashi Kumar
(the “Employer”)

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

ADJUDICATOR: Ib S. Petersen

FILE No.: 1999/587

DATE OF HEARING: November 30, 1999

DATE OF DECISION: February 11, 2000

DECISION

APPEARANCES

Mr. Mohammad Janief	on behalf of Ms. Shashi Kumar (“Kumar” or the “Employer”)
Mr. Vipul Pachchigar	on behalf of Ms. Pravina Pachchigar (“Pachchigar” or the “Employee”)

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on September 8, 1999. The Determination concluded Pachchigar was an employee of Kumar, as opposed to an independent contractor, and owed wages for her final pay period, for a total of \$860.99, including interest.

FACTS AND ANALYSIS

The appellants have the burden to show that the Determination is wrong.

The basic facts are relatively straight forward. Pachchigar was employed as a nanny for Kumar. There was a “contract” between them to the effect that Pachchigar was paid \$450 every two weeks. Initially, Kumar took the position that Pachchigar was an independent contractor. At the hearing, however, she agreed that Pachchigar was an employee. As an employee, she is entitled to vacation pay.

There is a dispute between the parties with respect to the hours and days worked by Pachchigar. According to the Determination, Pachchigar worked Monday through Friday from 3:00 p.m. to 10:00 p.m. and from 9:00 a.m. to 2:00 p.m. on Saturdays. She alleged that she was not paid for the period March 1 to 17, 1998. The delegate accepted that she worked 10 days during that period. As well, the delegate accepted Pachchigar’s claim that she worked on certain statutory holidays-- October 12 (Thanksgiving Day, November 11 (Remembrance Day), December 25 (Christmas Day) and January 1 (New Year’s Day)--at her regular rate of pay. From the Determination, it appears that the Appellant took the position that Pachchigar was an independent contractor and not an employee. She had no fixed hours and, in any event, worked no more than four hours per day. The delegate did not accept this.

At the hearing, Kumar was adamant that Pachchigar did not work between March 1 and March 17, 1998 and, as well, that she did not work on the statutory holidays in issue (October 12, November 11, December 25, 1997 and January 1, 1998). Pachchigar, on the other hand, was equally adamant that she worked those days. She explained the work done on those days. She agreed that she did not work between March 1 and March 6, 1998, but that she worked every day up until March 17, for a total of 10 days. She left the work place after a “quarrel” with Kumar. She quit on March 17, 1998.

It is clear that there are two conflicting versions of the events that brought the parties before me. Neither version is particularly compelling: Kumar says that Pachchigar did not work; Pachchigar says that she did. There are no documents in support of either side. Nor are there any witnesses to substantiate the respective versions. The evidence presented at the hearing was not particularly detailed. As mentioned above, the burden of proof is on the appellant to show that the Determination is wrong. The appellant must show the Determination is wrong on a balance of probabilities. In the instant case, I am of the view that she has not met that burden. In the result, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the Act, I order that Determinations in this matter, dated September 8, 1999 be confirmed.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal