

An appeal

- by -

Kerry Kierstead operating as All Season Landscaping and Gardening Services
("Kierstead")

- 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: William Reeve

FILE No.: 2002/574

DATE OF DECISION: January 21, 2003

DECISION

OVERVIEW

This is an appeal by Kerry Kierstead operating as All Season Landscaping and Gardening Services (“Kierstead”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on October 30, 2002.

The Determination found that Kierstead owed former employee Stephanie Bittner (“Bittner”) \$436.66 in wages plus interest for work done in a ten day period in June 2002 and also assessed a penalty of \$150.00 against Kierstead. The appeal is decided based on the written submissions of the parties.

ISSUE

There are two issues in this appeal. The first is whether Bittner is owed the wages calculated in the Determination. The second issue is whether Kierstead is liable for the \$150.00 penalty.

ARGUMENT

Kierstead in his appeal disputes the hours of work by Bittner. He also claims that Bittner was a contractor, not an employee. Further Kierstead states that he has no money to pay the Determination. He provided no argument concerning the penalty assessment.

Bittner argues that she worked the hours claimed.

THE FACTS AND ANALYSIS

There is no reason to think that Bittner did not work the hours that she reported. Kierstead had several opportunities to dispute those hours but did not do so until filing his appeal. He did not provide any evidence to support his contention that Bittner worked one hour less on each of the days in question than she had claimed.

There is nothing in evidence to support the claim by Kierstead that Bittner was an contractor and in fact in his appeal Kierstead compares Bittner’s hours to those of other employees, thus implicitly acknowledging that she also was an employee.

The Delegate reports that this was the second time that the Determination has been issued against Kierstead. This was not disputed.

Kierstead’s contention that he does not have the money to pay the Determination has no bearing on whether the money is owed.

In summary, I find that Bittner worked the hours that she claimed. Bittner is entitled to the wages calculated in the Determination and Kierstead is also liable for the penalty.

ORDER

The appeal is dismissed pursuant to section 114 (1) of the *Act*. Pursuant to section 115(1) of the *Act* the Determination dated October 30, 2002 is confirmed in the amount of \$436.66 for wages including vacation pay plus interest as in the Determination, plus additional interest in accordance with section 88 of the *Act*. The penalty assessed pursuant to section 98 of the *Act*, as it read at the relevant time, in the amount of \$150.00 is also confirmed.

William Reeve
Adjudicator
Employment Standards Tribunal