

An appeal

- by -

Diane Cseh operating as
Pauline Marie Jacqueline Cseh Client Support Group Society

- 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

TRIBUNAL MEMBER: David B. Stevenson

FILE No.: 2005A/2

DATE OF DECISION: March 3, 2005

Based on the evidence provided at the oral hearing, the Director concluded Chase was an employee of the Society on April 10, 2004, had performed work and was owed wages for that day.

The record filed by the Director under Section 112(5) of the *Act* contains a response from the Society, dated May 15, 2004, to the complainant's claim for wages. That response is referred to in the Determination.

ARGUMENT AND ANALYSIS

The burden is on the Society, as the appellant, to persuade the Tribunal that the Director committed an error in making the Determination and that the Tribunal should intervene to correct that error. An appeal to the Tribunal is not a re-investigation of the complaint nor is it intended to be simply an opportunity to re-argue positions taken during the complaint process. The grounds upon which an appeal may be made are found in Subsection 112(1) of the *Act*, which says:

112. (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*
- (a) *the director erred in law;*
 - (b) *the director failed to observe the principles of natural justice in making the determination;*
 - (c) *evidence has become available that was not available at the time the determination was made.*

The Society has divided its appeal into four sections. The first section responds to the outline of the evidence and argument provided to the Director by Chase and her witness at the oral hearing. This section disputes some of the assertions of facts attributed to Chase and her witness. The second section reiterates points of argument made in the May 15, 2004 response to the wage claim made by Chase. The third section takes issue with some of the conclusions of fact made by the Director in the Determination. The last section sets out reasons for the failure of the Society to attend the oral hearing.

The Society has not shown there is any error in the Determination. The Society is merely seeking to have the Tribunal reach a different conclusion than the Director on the same facts. The grounds of appeal set out in Section 112 of the *Act* do not allow the Tribunal to accept appeals that only challenge findings of fact.

However, in reality there is no substantial dispute between the parties about the facts of this case - only whether the facts are consistent with the conclusion of the Director that Chase was an employee of the Society on April 10, 2004 and entitled to be paid wages for that day.

Applying the undisputed facts to the relevant statutory provisions, including the definitions of "employee", "employer" and "work, and the objectives and purposes of the *Act*", there is no doubt at all that Chase was an employee for the purposes of the *Act* and entitled to be paid wages for the day in question.

In that context, it is appropriate to note that the definition of employee is inclusive, not exclusive, and, because the *Act* is remedial and benefits conferring legislation, the definitions contained within the *Act* are

to be given a large and liberal interpretation (see *Machtinger v. HOJ Industries Ltd.*, [1992] 1 S.C.R. 986).

The overriding considerations in this case must be that Chase “performed work normally performed by an employee”, that it was not her own work and that she performed that work on the instruction of the Society. These particular features are identified in the Determination.

In light of those considerations, it is not determinative, nor particularly relevant, that the Society feels the day’s activity was only a “demonstrable interview” process to test for suitability for employment, and was not training and orientation, or that there was no benefit to the Society from the activity performed by Chase.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination, dated November 26, 2004, be confirmed in the amount of \$602.45, together with any interest that has accrued under Section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal