

An appeal

- by -

Gerald Hahn

- 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 (as amended)

TRIBUNAL MEMBER: John M. Orr

FILE No.: 2006A/21

DATE OF DECISION: April 3, 2006

DECISION

OVERVIEW

1. This is an appeal by Gerald Hahn (“Hahn”) pursuant to S.112 of the *Employment Standards Act* (“the Act”) from a Determination dated January 17, 2006 issued by the Director of Employment Standards (“the Director”). The Determination found that Hahn had been an employee of Zone Construction Inc. (“Zone”) and that he was owed wages in the amount of \$6,317.09 including interest.
2. A delegate of the Director held a ‘hearing’ of some form on November 9, 2005 and issued findings as required by Section 81 of the *Act*. In considering Hahn’s complaint the delegate calculated the wages owing and took into account two cheques that had been issued by Zone to Hahn. The delegate found that one cheque had been returned “NSF” but indicates in part of the determination that the second cheque in the amount of \$468.00 had cleared the bank.
3. Hahn is satisfied with the determination of his wages except that he claims that the delegate was in error in finding that the second cheque had cleared the bank. He claims that he still has the original cheque and that it was not processed because the bank informed him that there were no funds left in Zone’s account. Hahn has appealed seeking to have the determination varied to add the \$468.00 to the total amount owing.
4. In the exercise of its authority under section 36 of the *Administrative Tribunals Act* incorporated into section 103 of the *Act*, the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ANALYSIS

5. Section 112 of the *Act* provides that a person served with a determination may appeal the determination to the Tribunal on the following three 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 being made.
6. Hahn has appealed on the ground that “evidence has become available that was not available at the time the determination was being made”. Of course this is not the case as it is evident from the record and from Hahn’s own submission that the evidence was available at the time and in fact considered by the delegate.
7. Hahn essentially submits that the delegate made an error that is ‘on the face of the record’. This sort of error can be considered as an error in law. In my opinion the Tribunal should look at the substance of the appeal and not be limited to which of the three grounds has been ‘checked’ by the appellant – especially when the appellant is not represented by counsel.

8. Accordingly, I have considered Hahn's appeal broadly to see if indeed an error has been made that is apparent on the face of the record. However, I have concluded that that such an error was not made.
9. The delegate was considering wages earned over the time period between May 13, 2005 and September 22, 2005. The delegate considered both cheques but addressed them differently. The first cheque, which was clearly presented to the bank for payment and rejected, was reimbursed to Hahn as a credit to wages owed and unpaid.
10. The second cheque is dated September 8, 2005 in the amount of \$468.00. Hahn did not provide the delegate with the original cheque but only provided a photocopy that bore no indication that it had ever been presented for payment or rejected by the bank. Hahn has only provided the Tribunal with a photocopy and likewise it bears no indication on its face that it was presented and rejected.
11. There is no new evidence presented that was not available at the time of the hearing and it is apparent that the delegate considered this aspect of the case. There would be no reason to interfere with the delegate's determination on this basis. In addition, in looking carefully at the delegate's findings, it is apparent that the delegate calculated the wages earned during the relevant periods and did not deduct the \$468.00 from the wages owed or credit this amount to Zone. Although the delegate did not specify his findings in regard to this cheque the net effect of his findings was to include this amount in the total amount of earned wages.
12. It would have been more clear and perhaps preferable if the delegate had specifically addressed this cheque in the reasons. Nevertheless I find no error 'on the face of the record' that requires correction by the Tribunal. Accordingly, I find that the appeal should be dismissed and the Determination confirmed.

ORDER

13. I order, under section 115 of the *Act*, that the Determination herein is confirmed.

John M. Orr
Member
Employment Standards Tribunal