

An appeal

- by -

Faultless Protection

- 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: John M. Orr

FILE No.: 2002/582

DATE OF DECISION: February 6, 2003

DECISION

OVERVIEW

This is an appeal filed by June Woods on behalf of an entity that may or not be a proprietorship or corporation apparently operating as Faultless Protection (“Faultless”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) from a Determination dated November 6, 2002 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 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.

The Director determined that some legally undefined entity known as Faultless Protection was a business owned and operated by June Woods (“Woods”). I note that the determination is issued against this legally undefined entity and not against Ms. Wood personally. A delegate of the Director determined that a person, Gwen Travers (“Travers”), had been employed by Faultless and that Faultless had failed to pay her wages for the month of March 2002 in the amount of \$1,696.34. There was agreement for rent to be deducted from wages and the Director accepted this as a valid assignment of wages. This issue is not appealed by either party.

Woods appeals from the determination on the basis that she does not deny that some wages were unpaid but that the amount has been incorrectly calculated as it includes wages subsequent to a date at which Travers had been “laid off”. She also claims that the entity is no longer in business.

ISSUES

The issue in this case is whether there is an error in the determination in the calculation of wages owing due to the lay-off of the employee and a certain assignment of wages. And, whether the determination is issued against a valid entity.

FACTS AND ANALYSIS

There is a conflict in the findings of the Director’s delegate.

In the opening “Background” of the findings the delegate states that Travers was employed from January 28, 2002 to April 24, 2002 at the rate of \$10.00 per hour. Subsequently in setting out the Employer’s position the delegate notes that the employer provide written notice of lay-off indicating that Travers was laid-off effective March 20, 2002. The independent witness interviewed by the delegate confirms that both she and Travers were given written notice of their lay-off. A copy of the written notice is provided in the materials before me.

In setting out the “Complainant’s Position” the delegate states that Travers had not been paid her wages in full for March but makes no reference to wages being owed for April. There is no comment in regard to February’s wages except that rent was deducted in accordance with the wage assignment. I must therefore assume that wages were paid for February.

In her “Findings of Fact” the delegate says that she accepts the information provided by the independent witness but then goes on to find that Travers worked until April 24th. There is no explanation for the rejection of the evidence of lay off effective March 20th.

The delegate then calculated wages owing as if Travers worked until April 24th. It seems unreasonable to ignore the effect of the lay off notice. In recalculating the wages owing up to and including March 20th the amount of wages owing is (103 hours @\$10.00 per hour) \$1030.00. When vacation pay is added the total comes to \$1098.80. The delegate states that \$890.00 was paid leaving a balance of \$208.80. However there was rent owing for the month of April that exceeds this amount. Based on this calculation there is no amount owing to Travers. Accordingly I conclude that the determination should be cancelled.

I also conclude that the determination should be cancelled, as it is issued in the name of an entity that is not a legal person. Section 74 of the *Act* provides that an employee may complain to the Director that “a person” has contravened the *Act* or the *Regulation*. Section 79 provides that the Director may issue a determination if satisfied that “a person” has contravened the *Act* or *Regulation*. There is no foundation in the determination to indicate that “Faultless Protection” is a “person”.

ORDER

I order, under section 115 of the *Act*, that the determination dated November 6, 2002 is cancelled.

John M. Orr
Adjudicator
Employment Standards Tribunal