

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Richard Allan Barry Operating as R. A. Barry & Son Landscaping
("Barry")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: L. Collingwood

FILE NO.: 96/707

DATE OF DECISION: February 7, 1997

DECISION

OVERVIEW

The appeal is by Richard Allan Barry operating as R. A. Barry & Son Landscaping (“Barry”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 004621 of the Director of Employment Standards (the “Director”), a decision dated November 7, 1996. In the Determination Jennifer Carroll is found to be owed wages and vacation pay.

The appeal alleges that no moneys are owed Carroll.

ISSUE TO BE DECIDED

Are wages and vacation pay owed Carroll?

FACTS

Barry operates a landscaping business in the Lower Mainland. Jennifer Carroll worked as a landscaper for Barry in 1995. The period of employment has been determined by the Director’s delegate to be May, 1995 to August, 1995. During that period of employment Barry and Carroll carried on a personal relationship. Carroll says that it began about 6 weeks after she started work.

Carroll’s first job for Barry was in North Vancouver. For that she was paid. The Director’s delegate found that she was not paid after that and is owed 59 hours of wages, and vacation pay on that amount of wages.

Barry in his appeal says that Carroll agreed to work for no pay as part of helping him in a period of financial distress. Carroll says that she never offered to work for free. Barry’s appeal goes on to question the motivation behind Carroll’s application to the Employment Standards Branch and he alleges that Carroll was fired from a job, had some personal problems and threatened him. He does not say what any of that has to do with the matter of whether wages and vacation pay are owed Carroll.

ANALYSIS

Barry alleges that Carroll was fired from a job, had some personal problems and threatened him. In doing so he provides me with nothing which leads me to think that there is any truth to the allegations but even if they were true, that is not reason to cancel the Determination or diminish the amount of the award. The same can be said for Barry’s questioning of the motive behind the complaint.

Is Carroll owed wages and vacation pay or is she not? That is the question. And in that regard, the Director’s delegate has conducted an investigation of Carroll’s complaint and has reached the conclusion that wages are owed, and vacation pay as a result. In doing so, the delegate found that Carroll was hired at \$10 per hour and that she was not paid for 59 hours of work. Barry’s appeal

does not question that. I am lead to the conclusion that the Determination, in those respects, is correct.

What Barry says is that Carroll at some point agreed to work for nothing, as a personal favour. He is unable to prove that however. I see nothing which indicates that Carroll somehow severed the employment relationship and began working as a volunteer. That they had a personal relationship does not mean that she quit being an employee.

I find that Carroll has been properly considered an employee under the *Act*. As an employee, she is entitled to be paid for her work.

ORDER

Barry has failed to show that Determination No. CDET 004621 is in any way wrong. I therefore order, pursuant to Section 115 of the *Act*, that it be confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

LDC:lde