

An appeal

- by -

Ryszard Jaroszewicz, carrying on business as Richard System Painting
(the “Appellant”)

- 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: Elena Miller

FILE No.: 2015A/64

DATE OF DECISION: July 30, 2015

DECISION

SUBMISSIONS

Ryszard Jaroszewicz on his own behalf, carrying on business as Richard System Painting

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Ryszard Jaroszewicz, carrying on business as Richard System Painting (the “Appellant”) has filed an appeal of a determination (the “Determination”) issued by a delegate (the “Delegate”) of the Director of Employment Standards on April 8, 2015. The Determination found the Appellant had contravened the *Act* by failing to pay wages to a complainant, Jonathan Boyce (“Mr. Boyce”). The Delegate assessed the total wages payable, including interest accrued to the date of the Determination, at \$983.87. In addition, he imposed \$1,000.00 in mandatory administrative penalties, for a total amount payable of \$1,983.87.

APPEAL

2. The Appellant asks the Tribunal to cancel the Determination. In a letter to the Tribunal dated May 14, 2015, Ryszard Jaroszewicz (“Mr. Jaroszewicz”) sets out the Appellant’s grounds for appeal. He says that Mr. Boyce worked casually for him in 2014. He says the rate of pay found by the Delegate in the Determination, \$25.00 per hour, is “false”. However, he provides no further information or submissions in support of this position. He does not state what he would say the true rate of pay was.
3. In the letter, Mr. Jaroszewicz further says Mr. Boyce did work for him at an address on Royal Avenue in North Vancouver, “but at different dates and less time than he stated”. He indicates Mr. Boyce worked April 1, 2 and 3, 2014, and that this “could be verified by the owner of the property Mr. David Smith”. He does not, however, include any written statement by Mr. Smith with his appeal. I further note the Determination states that Mr. Boyce provided the Delegate with Mr. Smith’s telephone number and on February 5, 2015, the Delegate spoke to Mr. Smith “who verified that Mr. Boyce painted the exterior and interior of his house in the first few days of May, 2014” (p. R3).
4. The Determination further states that Mr. Jaroszewicz “did not provide any records in response to the Demand for Records issued along with my letter of February 10, 2015”, and that in the Delegate’s letter of February 10, 2015, to Mr. Jaroszewicz, the Delegate outlined his preliminary findings and requested the Employer’s position and evidence “regarding the days the Complainant worked, his hourly wage, and the wages paid” (p. R3). The Delegate noted that “in the absence of any records from the Employer”, he based his findings on the evidence provided by Mr. Boyce as to when and for how many hours he worked (*ibid.*).
5. Mr. Jaroszewicz’s final submission on appeal is that he paid Mr. Boyce \$600.00 for the Royal Avenue job. He attaches a photocopy of a cheque for \$800 to Mr. Boyce from Richard System Painting, and says the extra \$200 was for “another project done a couple of days earlier”. He submits he paid Mr. Boyce for the work he did and that he does not owe him anything, and for that reason the Determination should be cancelled.

ANALYSIS

6. Under section 112(1) of the *Act*, a determination may be appealed on the grounds that (a) the director erred in law, (b) the director failed to observe the principles of natural justice in making the determination; or (c) evidence has become available that was not available at the time the determination was being made.
7. In the present case, Mr. Jaroszewicz does not assert any error of law or failure to observe principles of natural justice, and none are evident on the face of the Determination. Instead, he disputes findings of fact in the Determination. Expressing disagreement with the factual findings in the Determination does not provide a ground for appeal, however. I further note Mr. Jaroszewicz baldly asserts that the hourly rate and number of hours worked found are incorrect, but does not provide any basis for this assertion, and does not indicate what he would say are the correct hourly rate and number of hours worked.
8. Mr. Jaroszewicz attaches a photocopy of a cheque from Richard System Painting to Mr. Boyce for \$800 and submits that it shows he paid Mr. Boyce “for all work I contracted him for and I do not owe him anything”. On its face, however, the cheque does not prove these assertions. I further note Mr. Jaroszewicz does not dispute the statement in the Determination that he provided no records to the Delegate when specifically requested, and statutorily required, to do so. In particular, he does not claim to have provided this document, or explained his failure to do so. In these circumstances, the document cannot now be proffered as “new evidence” on appeal to the Tribunal, when it could have been provided to the Delegate in response to the request for employment records, but was not. Finally, as already noted, in itself the cheque does not establish that Mr. Boyce was paid for all work performed and that he is owed no wages. I note the Delegate found the amount of wages owing was more than \$800.
9. The Appellant provides no other basis for appealing the Determination. There are some assertions to the effect that Mr. Boyce did not do a good job or was not a good employee. These are bald and unsubstantiated assertions and in any event they do not establish a basis for interfering with the Determination under section 112 of the *Act*. I find the Appellant has provided no basis for cancelling or varying the Determination on appeal.

ORDER

10. For the reasons given, the appeal is dismissed. Pursuant to section 115 of the *Act*, the Determination is confirmed.

Elena Miller
Member
Employment Standards Tribunal