

An appeal

- by -

Domingos Belo and Maria Belo  
("Mr. and Mrs. Belo")

- 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:** David B. Stevenson

**FILE No.:** 2006A/67

**DATE OF DECISION:** July 18, 2006

## DECISION

### SUBMISSIONS

Domingos Belo	on his own and on behalf of Maria Belo
Keith J. Murray	on behalf of Chartwell Construction Ltd.
Ivy Hallam	on behalf of the Director

### OVERVIEW

1. This decision addresses an appeal filed under Section 112 of the *Employment Standards Act* (the “Act”) by Domingos Belo, on his own behalf and on behalf of Maria Belo (“Mr. and Mrs. Belo”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on April 21, 2006.
2. The Determination was made on complaints filed by Mr. and Mrs. Belo against Chartwell Construction Ltd. (“Chartwell”). Mr. Belo claimed he was owed regular and overtime wages and Mrs. Belo claimed she was owed statutory holiday pay. Mrs. Belo also claimed Chartwell had improperly deducted rent from her wages. The complaint by Mrs. Belo included a claim for damages for embarrassment and loss of dignity, which the delegate correctly decided was not a matter over which the Director had any jurisdiction under the *Act*.
3. The Director determined Chartwell had not contravened the *Act* and no wages were owing to either Mr. or Mrs. Belo.
4. The Determination is being appealed by Mr. and Mrs. Belo on the ground the Director failed to observe principles of natural justice in making the Determination. Notwithstanding that ground of appeal has been selected, there are elements of the appeal that allege the Director erred in law. I will address the substance of the appeal.
5. While the appellants have requested an oral hearing on the appeal, the Tribunal has reviewed the appeal and the materials submitted with it and has decided an oral hearing is not necessary in order to decide this appeal.

### ISSUE

6. The issue in this appeal is whether the appellants have shown the Director failed to observe principles of natural justice in making the decision or has committed any other reviewable error in the Determination.

## THE FACTS

7. Chartwell is a property management company. Mr. and Mrs. Belo were employed by Chartwell as caretakers (managers) in one of their properties, a 38 unit apartment building, from September 2004 to July 19, 2005.
8. The Director found Mrs. Belo was a resident caretaker, as that term is defined in the *Employment Standards Regulation* (the “*Regulation*”), and that Mr. Belo was a relief caretaker. In Section 1 of the *Regulation*, resident manager is defined as being a person who lives in an apartment building that has more than eight residential suites and is employed as a caretaker, custodian, janitor or manager of that building.
9. During the complaint process, Chartwell acknowledged Mrs. Belo was not paid properly for three statutory holidays that had occurred during her employment and voluntarily satisfied that obligation.

## ARGUMENT AND ANALYSIS

10. An appeal to the Tribunal is intended as an error correction process, with the burden being on the appellant to show there is an error in the Determination that compels the Tribunal’s intervention under Section 112 of the *Act*. An appeal is not intended simply as an opportunity to restate one’s position on the complaint or to reiterate assertions of fact that have not been accepted by the Director on the chance the Tribunal will reach a different conclusion on the complaint or, in this case, complaints.
11. Subsection 112(1) of the *Act* sets out the grounds on which an appeal may be brought:
  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.*
12. In this appeal, the burden of persuading the Tribunal there is a breach of natural justice is on Mr. and Mrs. Belo (see *James Hubert D’Hondt operating as D’Hondt Farms*, BCEST #RD021/05 (Reconsideration of BCEST #D144/04). The *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law (see *Britco Structures Ltd.*, BC EST #D260/03).
13. The appeal submission is somewhat disjointed, but I will address those elements of the appeal which bear some relation to the claims made by Mr. and Mrs. Belo that were addressed in the Determination but not accepted by the delegate.
14. Clearly, there is no basis in this appeal for alleging the Director failed to observe principles of natural justice in making the Determination. Nowhere in the appeal or the material on file is there any objective

foundation for suggesting Mr. and Mrs. Belo did not receive a full and fair opportunity to establish their claims.

15. It is apparent Mr. Belo disagrees with the Determination. It is also apparent that Mr. Belo does not fully understand the *Act* and *Regulation* and how they have been applied to the claims made by him and his wife. He has not, however, met the burden of showing there is any reviewable error in the Determination. I can find nothing on the face of the Determination that is inconsistent with the applicable provisions of the *Act* and *Regulation* governing the complaints made. At its core, the appeal does no more than dispute findings of fact and dwell on matters that are largely irrelevant to the application of provisions of the *Act* and *Regulation* to the complaints.
16. It does not matter, for example, whether Mr. and Mrs. Belo were hired as “resident managers” or “caretakers”. The definition of “resident caretaker” in the *Regulation* includes a person employed as a “manager”. As noted in the Determination, the terms used to describe a person’s position is secondary to deciding what the person does and how the *Act* applies to what the person does. The key question relating to this point was whether Mr. Belo was a resident caretaker for the purposes of the *Act*. The delegate considered that question and found he was not. There was evidence on which that finding could be made. Mr. Belo disagrees with it, but has not shown how it was wrong or, if it was wrong, that the Tribunal has the authority to change it on appeal.
17. In a similar way, it is irrelevant for Mr. Belo to argue about whether the “hours of work” in the contract were forty hours a week or something else when Section 35 of the *Regulation* says the overtime provisions of the *Act*, except for Sections 36 and 39, do not apply to a resident caretaker and their salary was set by agreement with Chartwell.
18. As for the “hours of work” issue relating to Mr. Belo’s claim for wages and overtime, it was his responsibility to persuade the delegate of the validity of his claim and he was unable to do that. He has not shown the delegate’s decision to reject his claim for regular and overtime wages was a reviewable error in the Determination. That question was examined by the delegate and a decision was made by her on the available evidence. On that evidence the delegate was quite justified in finding Chartwell did not owe Mr. Belo any regular or overtime wages. Mr. Belo disagrees with that decision, but has not persuaded me there was any error in that decision, or if there was, that it was an error of law or any other error that is reviewable under Section 112 of the *Act*.
19. Mr. Belo says there was no discussion about paying \$405.00 rent for the apartment which he and his wife occupied. The material on file show the terms of employment for Mr. and Mrs. Belo sets a salary that includes a “rent reduction” of \$400 a month. The letter setting out that term was accepted by both Mr. and Mrs. Belo. The Determination found no contravention of Section 21 of the *Act* because Mr. and Mrs. Belo had given Chartwell a written assignment of wages for that amount.
20. There is nothing in the material suggesting the “rent reduction” meant Mr. and Mrs. Belo would pay no rent - a fact which was appreciated by Mrs. Belo because she apparently gave Chartwell a cheque for the balance of the rent owing each month after the rent reduction was applied, but is a fact which appears to have eluded Mr. Belo. In any event, it is not apparent how this issue relates to any question arising under the *Act*. Mr. Belo has not shown in this appeal that it does.

21. The balance of the appeal is comprised of unsubstantiated and unjustified comments and accusations concerning the delegate and representatives of Chartwell which have no place in an appeal and will not be graced with any sort of response by me.
22. The appeal is dismissed.

**ORDER**

23. Pursuant to Section 112 of the *Act*, I order the Determination dated April 21, 2006 be confirmed.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**