



An appeal

- by -

Harlen D. Clark
("Clark")

- 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: Lorne D. Collingwood

FILE No.: 2000/679

DATE OF DECISION: February 14, 2001

DECISION

OVERVIEW

The appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”) and by Harlen Darrel Clark (who I will henceforth refer to as “Clark” and “the appellant”). Clark appeals a Determination by a delegate of the Director of Employment Standards (“the Director”) which is dated September 11, 2000. That determination awarded Clark no moneys at all, it being the conclusion of the delegate that there was not evidence to support Clark’s claim that the agreement on pay was \$1,500 a month plus commissions.

Clark, on appeal, again claims that the agreement on pay is one which entitles him to a salary of \$1,500 a month with commissions over and above that. And he claims that he is owed \$768.25 in commissions.

ISSUES TO BE DECIDED

The agreement on pay is at issue.

Depending on what is decided in respect to the first issue, there may or may not be a need to determine the extent of the employee’s commissions.

What I must ultimately decide is whether the appellant has or has not shown that the Determination ought to be varied or cancelled for reason of an error or errors in fact or law.

FACTS AND ANALYSIS

The employment ran from February 14, 2000 to March 17, 2000.

On discussing the terms of his employment, the employee indicated that he would require “a monthly salary to start of \$1,500 per month plus a car allowance”.

According to the employer, it was agreed that Clark would be paid commissions but receive a minimum guarantee of \$1,500 a month. And the employer claims that is what the employee was paid as the amount of commissions that were earned by Clark is less than the amount of the guarantee.

The delegate’s conclusion on pay is as follows:

“Clark’s proposal ... states that he requires a guarantee of a monthly salary and does not state that it is a monthly salary plus commission. Without evidence to support Clark’s position that this wage was \$1,500.00 plus commission, I have determined that on the balance of probabilities that Clark’s wage was a \$1,500.00

guarantee against commission. The employer provided a cheque for the vacation pay and car allowance that (Clark said he was) owed.”

(See Page 3 of the Determination)

The burden of proof is on the appellant.

There is no written contract of employment to show that pay is as the employee claims. And the employee does not produce witnesses, nor, indeed, any evidence to show that he is in fact entitled to a salary plus commissions.

I also find that the employee was paid \$1,500 on February 14, 2000 and \$375 on March 13, 2000. He received a car allowance moneys totalling \$625 over and above that.

The appellant has not produced evidence that shows that the Determination is in error on the agreement on pay. There is, therefore, no need to delve into the matter of what Clark earned in the way of commissions as it is clear that he earned less than the minimum amount of salary that he was guaranteed.

The appellant does not show the Determination ought to be varied or cancelled for reason of an error or errors in fact or law. The appeal is, therefore, dismissed.

ORDER

I order that the appeal be dismissed and, pursuant to section 115 of the *Act*, that the Determination dated September 11, 2000 be confirmed.

Lorne D. Collingwood

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal