

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Ranjit Singh operating as Super 8 Motels Inc.
("Singh")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 98/052

DATE OF DECISION: March 18, 1998

DECISION

OVERVIEW

This is an appeal by Ranjit Sing from a Determination of the Director dated January 8, 1998 which determined that the sum of \$200.00 was owing to the employee, Norman Ayers, for 2 days wages.

ISSUE TO BE DECIDED

Was the employee entitled to pay for 2 days wages?

FACTS

Norman Ayers ("Ayers") was employed by Ranjit Singh operating as Super 8 Motels Inc. ("Singh") as a manager at the Super 8 Motel in Cranbrook, British Columbia. He worked for 2 days when Mr. Singh terminated him. The reasons for the termination are in dispute. Mr. Singh alleges that Ayers was terminated because Ayers scheduled his daughter for a number of shifts in preference to existing employees. Ayers suggests that he was terminated because Ayers refused to schedule Singh's brother in law, for a shift schedule which Ayers believed was in violation of the provisions of the *Employment Standards Act* (the "Act"). Ayers ordinarily commenced his shift at 8:00 am. It is unnecessary for me to make any finding as to the reason for the termination, as Ayers is not entitled to any notice under the *Act* for length of service, as he did not work for the minimum period of qualification. He was terminated at 10:00 am. At the relevant time Ayers was paid \$2,000 per month salary, which works out to \$100 per day. The Director's delegate found that the employee was entitled to wages in the amount of \$205.38, which included \$5.38 interest.

The employer failed or neglected to respond to demands for information made by the Director's delegate. The Director's delegate attempted by telephone, and certified mail to obtain the employers side of the story. The employer failed to supply the Director's delegate with any information. The employer provided to the Registrar of this Tribunal a number of documents relating to an excuse for terminating Ayers on January 28, 1998, and an allegation that Ayers was overpaid for work performed in early June of 1997. This is completely new information, and no reason was advanced by the employer for the failure to provide this information to the Director's delegate.

ANALYSIS

Director's delegate is charged with the duty of investigating a complaint under the *Act*. It is important that those persons receiving a demand for information provide that information to the Director's delegate. The neglect or failure to provide information can frustrate an investigation. This Tribunal has an appellate function. It does not determine the facts in the first instance. This Tribunal has indicated that the Tribunal will not rehear a case on the merits with information that should have been provided to the Director's delegate during the course of the investigation: *Kaiser Stables Ltd.* (BC EST #D058/97). Given the finding that I have made that the employer neglected or refused to provide relevant information to this Tribunal, I place no weight on the information provided by the employer. In any event the material was completely irrelevant as to whether Ayers was entitled to be paid for two days wages.

The Director's delegate found that Ayers worked on June 16, and 17 of 1997. The Director's delegate determined that Ayers was terminated at 10:30 on June 17, 1997. There has been no cogent reason advanced by the employer to demonstrate any error on the part of the Director's delegate, or any reason why I should vary or cancel the Determination. In my view this was a frivolous appeal as it is one "where no justiciable question has been presented and the appeal is recognizable as devoid of merit in that there is little prospect that it can succeed": *Sammy S. Ali (Roti Kabob House)*, (BC EST #D 436/97).

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated January 9, 1998 be confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal