

An appeal

- by -

Karl Heinz Gieseler operating as Straight Edge Drywall
(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: Matthew Westphal

FILE No.: 2005A/64

DATE OF DECISION: July 13, 2005

DECISION

SUBMISSIONS

Karl Heinz Gieseler	on behalf of himself
Nabbimba Samson	on behalf of himself
Mary Walsh	on behalf of the Director of the Employment Standards

OVERVIEW

1. This is an appeal by Karl-Heinz Gieseler operating as Straight Edge Drywall (the “Appellant”) under s. 112 of the *Employment Standards Act* (the “Act”) of Determination ER # 124-091, dated April 8, 2005 (the “Determination”), issued by a delegate (the “Delegate”) of the Director of Employment Standards. The Delegate ordered the Appellant and Rene Gieseler to pay Nabbimba Samson (the “Respondent”) \$116.39 for unpaid wages and overtime and accrued interest, and imposed an administrative penalty of \$500.00 for contravening s. 18 of the *Act*.
2. The Tribunal has decided that this case can be decided without an oral hearing. Based on my review of the Determination, the submissions of the parties, and the record provided to me, I am dismissing the Appellant’s appeal.

ISSUES

3. Did the Delegate err in law or fail to observe the principles of natural justice in making the Determination?

BACKGROUND

4. Straight Edge Drywall is a construction business that, at least at some point in the past, was operated by the Appellant and Rene Gieseler as a partnership.
5. On November 13, 2003, Rene Gieseler hired the Respondent to perform manual labour for Straight Edge Drywall the following day. The Respondent worked with Rene Gieseler at a job site on November 14, 2003, at the rate of \$10.00 per hour. The Respondent’s dealings with Straight Edge Drywall were only with Rene Gieseler, and not with the Appellant.
6. The Respondent filed a complaint with the Director on February 16, 2004, claiming that he had worked 10 hours for Rene Gieseler operating as Straight Edge Drywall, but had not been paid any regular or overtime wages for his work. Rene Gieseler had written a letter to the Employment Standards Branch dated January 6, 2004, stating that the Respondent had only worked four hours for him, and that he had paid the Respondent in cash in advance for the work. A search of the Corporate Registry indicated that Straight Edge Drywall was a partnership between the Appellant and Rene Gieseler.
7. Both the Appellant and Rene Gieseler were aware of the Respondent’s complaint.

8. On December 9, 2004 the Delegate held a complaint hearing. Neither the Appellant nor Rene Gieseler attended the complaint hearing, despite having received notice of it. The hearing was delayed for 30 minutes while a representative of the Employment Standards Branch attempted to contact the employer. These attempts were unsuccessful, and the Delegate proceeded with the hearing in the absence of the Appellant and Rene Gieseler. The Delegate accepted the Respondent's evidence that he had performed 10 hours of work for Straight Edge Drywall and had not been paid anything for it. She found that he was owed 8 hours' regular wages, at \$10.00 per hour, and 2 hours' overtime wages, at \$15.00 per hour, which, with accrued interest, amounted to \$116.39. The Delegate also found that Straight Edge Drywall had contravened s. 18 of the *Act* by not paying the Respondent all wages owing, and imposed a \$500.00 administrative penalty. The Delegate issued the Determination against both the Appellant and Rene Gieseler operating as Straight Edge Drywall.

SUBMISSIONS

9. The Appellant does not take issue with the Delegate's finding that the Respondent worked 10 hours for Straight Edge Drywall without being paid. Rather, he states in his original appeal submission that he should not be liable for the amount owing in the Determination because he "was not involved anymore in this venture when most or all of the contact happened between Straight Edge & the Director of Employment Standards."
10. The Delegate argues that the Appellant is liable. She notes that a search of the Corporate Registry conducted on August 26, 2004 showed that both the Appellant and Rene Gieseler were operating Straight Edge Drywall as a partnership. She also provided evidence that the Notice of Complaint Hearing and Demand for Records were delivered to the Appellant's residential address on October 18, 2004. In her submission, the Appellant was a partner of Straight Edge Drywall at the time wages were earned and payable, and was notified of the complaint hearing, so there was no error of law or breach of natural justice.
11. In his reply submission the Appellant reiterates that he had ceased to have any involvement in Straight Edge Drywall more than a year previously. Nevertheless, the Appellant states that he has "done the morally right thing in the meantime," by sending the Respondent a cheque for \$116.39. The Delegate has confirmed that the Appellant made this payment, and that the Employment Standards Branch is holding the funds in trust pending the outcome of this appeal. In this decision I have not treated this voluntary payment on the part of the Appellant as an admission of liability.
12. The Respondent filed a reply submission emphasizing the efforts he has made to obtain payment of his wages by the Appellant and Rene Gieseler, and arguing that the Appellant's appeal is baseless.

ANALYSIS

13. Principles of natural justice are, in essence, procedural rights that ensure parties know the case against them, the right to respond, and the right to be heard by an independent decision maker. Although the Appellant cites a breach of natural justice as one basis of his appeal, he has provided no evidence of such a breach of natural justice. He does not claim that he did not have notice of the nature of the Respondent's complaint, or notice of the complaint hearing. Rather, his appeal is based entirely on his position that he should not be liable for the Respondent's unpaid wages or for the administrative penalty because he had ceased to be a partner of Rene Gieseler in Straight Edge Drywall.

14. A partnership is “the relation which subsists between persons carrying on business in common with a view of profit”: *Partnership Act*, R.S.B.C. 1996 c. 348, s. 2. The *Partnership Act* further provides as follows:
7. (1) A partner is an agent of the firm and the other partners for the purpose of the business of the partnership.
 - (2) The acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he or she is a member bind the firm and his or her partners, unless
 - (a) the partner so acting has in fact no authority to act for the firm in the particular matter, and
 - (b) the person with whom he or she is dealing either knows that the partner has no authority, or does not know or believe him or her to be a partner.
 - ...
 11. A partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he or she is a partner, and after his or her death his or her estate is also severally liable in a due course of administration for those debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his or her separate debts.
15. Whether the Appellant is jointly liable with Rene Gieseler for the Respondent’s unpaid wages and for the administrative penalty (which, under s. 98(4) of the *Act*, is a debt due to the government), depends on whether the Appellant was a partner of Rene Gieseler in Straight Edge Drywall when the Respondent worked for Rene Gieseler.
16. Although the Appellant has stated that the partnership with Rene Gieseler in Straight Edge Drywall has been dissolved, he has not stated precisely when the partnership ended or, in particular, whether it was dissolved before the Respondent performed his day of work for Straight Edge Drywall. Even if the partnership had been dissolved before that date, the Appellant chose not to avail himself of the opportunity to attend the complaint hearing and present evidence to this effect to the Delegate. Since the Appellant had notice of the complaint hearing, it was not a breach of natural justice for the Delegate to proceed with the hearing in his absence. Nor was it an error of law for the Delegate to rely, in the absence of any evidence to the contrary, on the Corporate Registry search that indicated that the Appellant was a partner of Rene Gieseler in Straight Edge Drywall, and to issue the Determination against both the Appellant and Rene Gieseler.
17. For these reasons, I dismiss the Appellant’s appeal. If the Appellant was not a partner in Straight Edge Drywall at the time of the Respondent’s employment, then his remedy is against Rene Gieseler.

ORDER

18. I order, pursuant to s. 115(1)(a) of the *Act*, that the Determination be confirmed, together with any further accrued interest.

Matthew Westphal
Member
Employment Standards Tribunal