

An appeal

- by -

Bajwa Enterprises Inc. operating as Surrey Animal Hospital  
("Surrey Animal Hospital")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2005A/93

**DATE OF DECISION:** July 27, 2005



6. When Surrey Animal Hospital first filed its appeal, the Tribunal's Vice-Chair advised the parties (May 25th, 2005 letter) that the appeal might be adjudicated based solely on the parties' written submissions. Further, upon receipt of the section 112(5) "record" and Ms. Fitzgerald's June 14th submission, the Tribunal's Vice-Chair specifically solicited a final reply on or before June 30, 2005 from Surrey Animal Hospital but no such submission was received.
7. Surrey Animal Hospital's failure (despite repeated requests) to provide further particulars and evidence in support of its grounds of appeal is, to say the least, perplexing. The Tribunal adjudicates appeals based on the evidence and arguments filed by the parties; an appellant that simply advances uncorroborated assertions of legal error, or denials of natural justice, can hardly expect to have a reasonable prospect of successfully challenging the Determination under appeal.

## ISSUES ON APPEAL

8. As noted above, Surrey Animal Hospital appeals the Determination—and says that it should be cancelled—on two grounds. First, Surrey Animal Hospital alleges that the Director's delegate erred in law [section 112(1)(a)]. Second, Surrey Animal Hospital alleges that the Director's delegate failed to observe the principles of natural justice in making the Determination [section 112(1)(b)]. I shall deal with each ground of appeal in turn.

## FINDINGS AND ANALYSIS

### *The Director's delegate erred in law*

9. This ground of appeal is particularized as follows:

The onus was on the Respondent to prove the contract of employment. The Director failed to weigh the evidence to ascertain whether the Respondent has carried the burden of proof.

The Director has failed to establish that the Appellant has contravened the Employment Standard's act [sic].

10. As noted above, there was an oral evidentiary hearing before the delegate on March 4th, 2005. Ms. Fitzgerald testified that she worked as a temporary night-shift receptionist at the Surrey Animal Hospital during the period September 2nd to October 15th, 2004 and was supposed to be paid \$8 per hour. She testified that she worked 127 hours during this latter period but was not paid any wages whatsoever.
11. The employer's evidence was that although its regular receptionist went on medical leave on August 31st, 2004, and returned in January 2005, Ms. Fitzgerald only was on-site for 2 or 3 hours for no more than 2 evenings while she was being "shown around". Apparently, Ms. Fitzgerald had expressed some interest in enrolling in a veterinary assistant's course and the principals of the Surrey Animal Hospital were simply giving her some background information and exposure to a veterinarian's clinical practice.
12. Clearly, the delegate had before him diametrically opposed versions of the actual events in question. As I review the delegate's reasons, he carefully reviewed the conflicting evidence, looked for corroboration where he could find it, and ultimately concluded that the parties had been in an employment relationship. Not only do I find that latter conclusion to be entirely defensible based on the evidence that was before

the delegate, I consider the delegate's finding to be the most reasonable conclusion to be reached in the circumstances.

13. The Tribunal has repeatedly stressed that it will not overturn findings of fact made by a Director's delegate merely because there was some evidence before the delegate that was inconsistent with the delegate's ultimate factual determinations. If a delegate's findings are based on a careful consideration of the conflicting evidence, the Tribunal will not intervene. That principle is especially apposite in a situation where, as in this case, the delegate had the opportunity to hear the conflicting evidence in person.
14. Based on the findings made by the delegate—all of which were supported by a proper evidentiary foundation—I am unable to conclude that the delegate erred in law in determining that Ms. Fitzgerald met her burden of proving an employment relationship; that she had worked for 127 hours without pay; and that in consequence of that latter failure, Surrey Animal Hospital contravened the *Act*.

***The Director's delegate failed to observe the principles of natural justice in making the Determination***

15. This ground of appeal is particularized in Schedule A to the Appeal Form as follows:
  - The Director made an illicit inference from the facts to norms.
  - The Director did not allow procedural fairness in failing to apply principles of equity.
16. Quite apart from its grammatical "creativity", Schedule A reflects a rather poor understanding of the principles of administrative law. I certainly do not think that the delegate did anything "illicit" in making his findings of fact. As noted above, the delegate had conflicting evidence before him and he was therefore legally obliged to make findings of fact based on the "balance of probabilities"—this is precisely what the delegate did.
17. I am not quite sure how the principles of equity apply in this case—we are dealing with a purely statutory regime and, in any event, Ms. Fitzgerald never sought an equitable remedy (such as, for example, specific performance). As for procedural fairness, the record before indicates that Ms. Fitzgerald initially filed a complaint with the Employment Standards Branch; subsequently, an oral evidentiary hearing was scheduled at which Surrey Animal Hospital was given the opportunity to present its own evidence and challenge Ms. Fitzgerald's evidence; finally, the delegate prepared extensive Reasons summarizing the parties' evidence and explaining how and why he reached his factual and legal conclusions. One wonders what more might have been demanded of the Director and his delegate in terms of ensuring that both parties received a reasonable measure of procedural fairness.
18. In my view, Surrey Animal Hospital has wholly failed to establish that the Director's delegate failed to observe the principles of natural justice in making the Determination.

**ORDER**

- <sup>19.</sup> Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$1,578.34** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

---

**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**