

An appeal

- by -

Maple Beach Bed And Breakfast Inc.
(the "Employer")

- 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

TRIBUNAL MEMBER: Kenneth Wm. Thornicroft

FILE No.: 2004A/35

DATE OF DECISION: July 29, 2004

DECISION

SUBMISSIONS

Kim Miles for Maple Beach Bed and Breakfast Inc.
Allie Lasha Peters on her own behalf
Ivy Hallam for the Director of Employment Standards

INTRODUCTION

This is an appeal filed by Maple Beach Bed and Breakfast Inc. (the “Employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). The Employer appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “delegate”) on February 26th, 2004 (the “Determination”).

Following an oral hearing held on July 29th and August 12th, 2003, the Director’s delegate determined that the Employer owed its former employee, Allie Lasha Peters (“Peters”), the sum of \$4,546.02 on account of unpaid wages and section 88 interest.

As communicated to the parties by way of the Vice-Chair’s letter dated April 21st, 2004, this appeal is being adjudicated based solely on the parties’ written submissions (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). I note that none of the parties requested that the Tribunal convene an oral hearing in this matter. I have before me the original appeal documents filed by the Employer, Ms. Peters’ submission dated March 12th, 2004 and a brief submission and the section 112(5) record filed by the Director’s delegate.

THE DETERMINATION

The Employer’s principal, Kim Miles (“Miles”), and his sister, Brenda Collins, testified before the delegate on behalf of the Employer; Ms. Peters testified on her own behalf. According to the information set out in the Determination, Ms. Peters worked at the Employer’s “bed and breakfast” business from August 1st, 2001 to October 31st, 2002.

The business was operated in Mr. Miles’ home and consisted of six guest rooms. Ms. Peters’ duties included accepting reservations (in-person, by telephone and by e-mail) and checking-in guests, making breakfasts, grocery shopping, cleaning and other sundry duties. Ms. Peters was paid a salary, in cash without statutory deductions, and in addition was provided “room and board” at Mr. Miles home.

In the absence of any payroll records, and in light of the delegate’s refusal to accept Ms. Peters’ “journal” as a credible and contemporaneous record of her hours worked, the delegate concluded—based on an assessment of Ms. Peters’ likely number of working hours based on her duties—Ms. Peters worked a minimum of 4 hours each day, seven days each week and, during the busy summer season, at least 6 hours each day.

The Employer admitted not having paid statutory holiday pay or vacation pay and, in the result, the delegate awarded Ms. Peters compensation based on the minimum wage (less wages actually paid), statutory holiday pay for five holidays, section 32 overtime pay, vacation pay and section 88 interest. As noted above, the total amount awarded to Ms. Peters was \$4,546.02. In calculating this latter amount, the delegate did not “credit” the Employer for the value of the “room and board” provided to Ms. Peters: “...the provision of room and board was not part of the calculation of wages” (Determination, p. 11)

ISSUES ON APPEAL

The Employer appeals the Determination on the grounds that the Director’s delegate:

- erred in law [section 112(1)(a); and
- failed to observe the principles of natural justice in making the Determination [section 112(1)(b)].

THE PARTIES’ POSITIONS

The Employer

The only submission I have from the Employer in support of its appeal is a half-page single-spaced letter appended to its appeal form. In this latter document, the Employer particularized both grounds of appeal as follows:

On page 11 of the Determination, the Director states, “Without any documentary evidence, there is no proof that there was a monetary value determined for room and board. Therefore, I find that the provision of room and board was not part of the calculation of wages.”

[Ms. Peters] and the employer, Kim Miles, agreed to an oral contract for services on or about July 30, 2001. [Ms. Peters] agreed to perform the tasks involved in the daily running of a bed and breakfast for the sum of \$1400 per month [\$600 paid in cash and \$800 for room and board]. [Ms. Peters] has admitted to this agreement in writing [Employment Standards Self-help Kit, Page 8] and does not dispute it. The Director ruled the contract has no value because it is oral and not written. This is an error of law. An oral contract has as much validity as a written contract although from a practical view it is advantageous to have it in written form as this case shows. However, simply because a contract is not documented in writing does not mean the substance of the contract did not exist.

Also, I feel the Director failed to observe the principals [sic] of natural justice. She gives no monetary value to the room and board without documentation yet she gives value to the wages paid without documentation. This is neither fair nor consistent...[Ms. Peters] knew and understood [the value attributed to room and board] and agreed to it. It is not just that the Director gives no value to it.

Ms. Peters

In her submission, Ms. Peters states that the verbal agreement between her and the Employer was for \$600 in wages and a further \$800 to be attributed to room and board but that this agreement was predicated on a 28-hour work week. For the sake of completeness, I have reproduced the following excerpt from Ms. Peters' original complaint filed October 30th, 2002 (Record, p. 1):

The employment contract/agreement as follows:

- My hours of work would be 28/week x 7 days (4 hours/day)
- Room and Board at a rate of \$800/month
- Paid biweekly \$600 for wage
- Total income for the month = \$1400/month.

I might add that Ms. Peters also acknowledged the \$800 monetary value attributed to room and board in her "Problem Description Form" (Record, p. 3).

The Director's Delegate

The delegate's position, as set out in her submission dated March 26th, 2004, is that: "Based on the evidence presented at the hearing, no contract existed between the employer and the complainant on the cost of room and board".

FINDINGS AND ANALYSIS***Did the employment contract contain a term regarding "room and board"?***

I find the delegate erred in concluding that there was no agreement with respect to room and board. The evidence contained in the record indicates that both Mr. Miles, for the Employer, and Ms. Peters acknowledged that there was an original oral employment agreement that involved payment for services both by way of cash and the provision of room and board. Mr. Miles and Ms. Peters also agree that some monetary value should be attributed to the room and board component of Ms. Peters' total compensation. On this latter score, I find that the \$800 per month figure is amply supported by the evidence contained in the record. While Mr. Miles may have disputed the \$800 figure before the delegate, he does not do so before this Tribunal.

As Mr. Miles quite rightly noted in his appeal documents, the fact that the parties' agreement was oral, rather than written, does not undermine its legal validity. However, the fact that an oral agreement may be a valid contract begs the question of whether this particular oral agreement relating to the provision of "room and board" can be enforced under the *Act*.

Did the delegate err in law, or otherwise breach the rules of natural justice, by failing to account for "room and board" when calculating Ms. Peters' unpaid wages?

The appropriate treatment of "room and board" under the Act has been the subject of several Tribunal decisions. I think it fair to say that these various decisions are not uniformly consistent in result, however, the differing lines of analysis set out in the decisions reflect, more than anything else, the nature of the arguments advanced by the parties. The several Tribunal decisions with respect to the matter of

“room and board” are discussed in some detail in Skeena Valley Guru Nanak Brotherhood Society, B.C.E.S.T. Decision No. D361/00.

As noted by the 3-member reconsideration panel in Skeena Valley Guru Nanak Brotherhood Society, an employer must pay “wages” (as determined by the parties’ contract and, in any event, not less than the minimum wage) to an employee for all hours worked. “Wages” must be paid in accordance with section 20 of the Act—that is, in cash; by cheque, draft or money order drawn on savings institution; or by way of a direct deposit to the employee’s account at a savings institution. The Skeena Valley reconsideration panel stated (at page 9):

We find that section 20 does not contemplate the payment of wages “in kind”; as a result we find that “free room and board” cannot per se be considered “wages” within the meaning of the Act. It is not appropriate to convert free room and board into a dollar value and then to consider it a wage.

As pointed out in a number of decisions it may be permissible to deduct payments for rent where there is a written assignment of wages in a specific amount to meet a specific credit obligation.

Thus, an employer may pay a “net wage”, having deducted (and documented) the agreed value of “room and board”, but only if the requirements of section 22 are satisfied. In the latter case, there must be a “written assignment of wages” given by the employee to the employer [section 22(1)].

Although there may have been an agreement about the amount of wages to be deducted from Ms. Peters’ pay each month, there was no authorizing written assignment in this case. Indeed, there was no deduction from Ms. Peters’ wages at all—at least not in a formal sense. The Employer in this case simply provided room and board in lieu of payment of wages. This sort of “in kind” payment is not permissible under the Act (see also 1849 Flying U Ranch Ltd., B.C.E.S.T. Decision No. D019/03 at p. 4).

Accordingly, in my view, the delegate did not err in failing to credit the Employer for the value of “room and board” when she calculated Ms. Peters’ unpaid wage entitlement.

It may be—and I express no opinion on the point—that the Employer has a legal right to advance a separate civil claim for what is known as “occupation rent”, however, such a claim would have to be filed in the civil courts since this is a matter that stands wholly outside the ambit of the Act.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$4,546.02** 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