

An appeal

- by -

Rachel Guvi and Archie Guvi operating as  
Global Internet Systems Co.  
(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

**ADJUDICATOR:** E. Casey McCabe

**FILE No.:** 2001/897

**DATE OF DECISION:** May 2, 2002

## DECISION

### APPEARANCES:

Archie Guvi	for the employer
Saeid Shaban-Zanjani	for himself
Pat Cook	for the Director of Employment Standards

### OVERVIEW

This is an appeal by Rachel Guvi and Archie Guvi operating as Global Internet Systems Co. (the “Employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination dated December 6, 2001. That Determination found the Employer liable in the amount of \$6,015.15 to Saeid Shaban-Zanjani (the “Complainant”) for regular wages, vacation entitlement and interest.

### ISSUE TO BE DECIDED

Did the Complainant work for the Employer between April 15, 2001 and June 15, 2001?

### FACTS

The Employer operates a computer store that also designs and maintains web sites. A complaint was filed with the Employment Standards Branch on August 1, 2001 by Saeid Shaban-Zanjani alleging that the Employer owed Mr. Shaban-Zanjani for regular wages not paid.

The Complainant was first hired by the Employer in December of 2000. Prior to this the Complainant had been volunteering with the Employer as part of his practicum for the BCIT course he was taking in programming and database systems. The Complainant was approached by the Employer and offered a position as webmaster.

Prior to Mr. Shaban-Zanjani started to work for the Employer an agreement was made between the Employer and Sante Services Ltd. (“Sante”) to provide a wage subsidy for the first six months of Mr. Shaban-Zanjani’s employment. Sante is a contractor that provides training services and administers a government funded training program. The contract stated that Sante would provide a wage subsidy of 50% for the first two months of employment, 20% in the second two months, and 10% in the final two months of the agreement. The contract between Sante and the Employer provided that Sante would reimburse the Employer provided that the Employer submitted a claims form, an activities report and proof of employee payment.

From the material before me it appears that Sante reimbursed the Employer \$3,528.00. The Employer sent Claim Forms to Sante at the end of June, 2001 claiming reimbursement for hours worked by the Complainant between April 15, 2001 through to June 15, 2001. Sante refused to reimburse for these hours based on the fact that no proof of payment to Mr. Shaban-Zanjani was sent in with the Claim Forms.

On August 1, 2001, Mr. Shaban-Zanjani filed a complaint with the Employment Standards Branch alleging that the Employer had not paid him for the hours he had worked between April 15, 2001 through to June 15, 2001. The file was assigned to a Delegate of the Director of Employment Standards who requested that the Employer provide the Complainant's work record. The Employer did not respond to this request nor to the follow up requests including a Demand for Employer Records pursuant to section 85 of the Act. The Employer did not respond to this Demand and the Delegate made a Determination based on the evidence provided by the Complainant and Sante. Included in the evidence is a Record of Employment (R.O.E) which states that Mr. Shaban-Zanjani's last day of work was April 15, 2001. The R.O.E. was issued May 15, 2001. Mr. Shaban-Zanjani states that he did not receive the R.O.E. until July 6, 2001. There is also a number of wage statements that were forwarded to Sante by the Employer and copies of four cheques issued by the Employer to the Complainant. The cheques are dated; January 15, 2001, January 31, 2001, February 15, 2001, and June 18, 2001.

## ANALYSIS

The Tribunal has a long-standing policy of refusing to hear evidence that was not adduced to the Delegate during the initial hearing. ( See *Tri-West Tractor Ltd.*, BC EST # D268/96). The Employer is not entitled to "lie in the weeds" during the investigation and then raise evidence on appeal that should have properly been before the Delegate during the investigation. While the Tribunal does have the discretion to admit evidence that was not placed before the Delegate the party wishing to adduce the evidence must be able to show compelling reasons for the failure to provide the evidence. In the present case, the only reason offered by the Employer is that they were under a great deal of stress and that Mr. Gubi had been experiencing some heart problems. While I have no reason to disbelieve this statement the fact remains that it does not excuse the failure of the Employer to respond to the Delegate's request for information. I find that the Employer has not demonstrated reasons why any new evidence should be accepted in this Appeal.

The sole issue to be decided is whether the Complainant worked for the Employer between April 15 through to July 15, 2001. The Employer takes the position that Mr. Shaban-Zanjani stopped working for the Employer in mid April 2001 but continued on a casual basis until mid June, 2001. In the appeal submission the Employer states that Mr. Shaban-Zanjani informed the Employer that he would be happy just to be paid the wage subsidy provided by Sante and that the Employer need not pay him any more.

The Delegate, in determining that the Complainant had worked for the Employer during this time, relied on the information provided by the Complainant as well as the Claim Forms that were sent to Sante by the Employer. As stated earlier, these forms show that the Complainant was working for the Employer up to June 15, 2001. The only evidence that the Delegate had to dispute this finding was the R.O.E. stating that the Complainant had ceased to work for the Employer on April 15, 2001. The R.O.E. was not filled out until May 15, 2001. Nowhere in the Employer's submission is it contested that the R.O.E. was issued to the Complainant prior to June, 2001. I find that the Delegate was entitled to rely on the documentation supplied by the Employer which was forwarded to Sante declaring the hours worked by the Complainant as these records provided the best evidence of the Complainant's work history. As such, I can find no error in the Determination.

Finally in the Complainant's reply dated February 7, 2002 and received by the Employment Standards Tribunal on February 11, 2002, the Complainant submits that the Delegate was in error in finding that the Complainant did not work for the Employer between June 16, 2001 through to July 6, 2001. This submission came over two months after the Determination and as such is beyond the statutory limit for

the filing of appeals. While the Tribunal does have the discretion to relieve against the time limits, no formal application has been made by the Complainant. As such I find that I am without jurisdiction to consider the Complainant's submission on this point.

## **ORDER**

The Determination dated December 6, 2001 is confirmed.

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**E. Casey McCabe**  
**Adjudicator**  
**Employment Standards Tribunal**