

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Gerhard Rieger operating G.R. Fraser Marketing
("G. R. Fraser")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/302 & 96/303

DATE OF DECISION: July 10, 1996

DECISION

OVERVIEW

This is an appeal by Gerhard Rieger operating G. R. Fraser Marketing (“G. R. Fraser”), pursuant to Section 112 of the *Employment Standards Act* (“Act”), against two Determinations issued by a delegate of the Director of Employment Standards. Determination No. CDET 001922 was issued on April 11, 1996 and Determination No. CDET 001987 was issued on April 16, 1996.

The Determinations found that G. R. Fraser had contravened the following sections of the *Act*:

- Section 16 Minimum wage
- Section 18(2) Payment of wages upon termination of employment
- Section 40(1) Overtime wages
- Section 45(1) Statutory holidays

I have reviewed the documents submitted by G. R. Fraser and those provided to the Tribunal by the Director’s delegate and have concluded that the Determinations should be confirmed.

FACTS

G. R. Fraser gives the following reasons for appealing both Determinations:

- Have not been informed of complaint. Facts in Determination are wrong.
- I have never refused mail since I never received notification. Mail to the wrong address. Mr. Jacura’s information is wrong.

The Determinations were issued following a complaint by Stephen Jacura (“Jacura”) who was employed as an advertising consultant by G. R. Fraser from August, 1995 to November, 1995. Jacura claimed improper payment of wages, annual vacation pay and statutory holiday pay.

Determination No. CDET 001922 contains the following statement:

Attempts to obtain Mr. Riegers point of view have met with no success. Materials sent to the office address have been returned by the post office as undeliverable (the office is no longer at the site) and a Demand For Employer Records was returned to us by the post office after it was refused by Mr. Rieger. There has been no answer at Mr. Rieger's unlisted home telephone number (931-3027).

In light of the above, the Determination is based solely upon the information provided by the Complainant, Mr. Jacura. Calculations are attached.

On May 24, 1996 the Tribunal provided G. R. Fraser with a copy of all documents submitted to it by the Director's delegate and asked for a written response by June 14, 1996. There was no response.

The Director's delegate made the following written submission:

With respect to the issue of delivery of the documents, a Demand For Employer Records and, subsequently, the Determinations in question were delivered to the operating address of the company. These documents were returned to us by the post office as "moved - address unknown". In the interests of natural justice, I tried to find the employer's home address. The company is a proprietorship and the company name is registered with the Registrar of Companies but with only one employer's name and no home address. So, the information was obtained using information from his driver's license. Unfortunately, the wrong apartment number was given to us and the mail was again returned to our office. In any event, the Employer learned of the documents when his bank account was frozen and the documents in question were handed to him in person on May 1, 1996.

With respect to the issue of the Complainants information, the Complainant has submitted records of the hours worked each day, which indicate that he was working on a full-time basis, along with documentation of "sales" made on these days. This information is attached. In addition, the Complainant evidence is that he was required to attend the Employer's office for training which was unpaid.

ANALYSIS

G. R. Fraser does not offer any substantive grounds for its appeal. It asserts that “Jacura’s information is wrong”, but does not provide any payroll records to refute Jacura’s complaint or the delegate’s findings in the Determinations. In the delegate’s submission she states that “...the Employer learned of the documents when his bank account was frozen and the documents in question were handed to him in person on May 1, 1996.” G. R. Fraser’s appeal signed by Gerhard Rieger and is dated May 6, 1996. It is, therefore, incorrect and misleading for Rieger to state in the appeal “Have not been informed of complaint.”

I can find no reason to vary or cancel the Determination

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination No. CDET 001922 and Determination No. CDET 001987 be confirmed.

Geoffrey Crampton
Adjudicator
Employment Standards Tribunal

GC:sr