

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Oscar H. Kichintuka
("Kichintuka")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 1999/120

DATE OF DECISION: April 27, 1999

DECISION

OVERVIEW

This is an appeal by Oscar H. Kichintuka (“Kichintuka”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated February 12, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). Kichintuka alleges that the delegate of the Director erred in the Determination by concluding that wages in the amount of \$998.81 were owing to Kichintuka. Kichintuka alleges that the amount of wages owing was not calculated correctly and that a greater amount is owing.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Kichintuka is owed additional wages ?

FACTS

The following facts are not in dispute:

- Kichintuka was employed by R.D.I. Reforestation and Developments Inc. (“RDI”) as a silviculture worker;
- Kichintuka performed work for RDI at 2 separate locations, from March 17 - April 25, 1998 in the Queen Charlotte Islands (Job PL-01-98) and from May 4 - May 16, 1998 in the Nakusp area (Job PL-07-98);
- Kichintuka signed an “Employment Agreement” with RDI;
- Kichintuka filed a complaint with the Employment Standards Branch (the “Branch”) dated June 22, 1998 alleging wages were owing from RDI;
- Kichintuka filed a second complaint with the Branch dated July 8, 1998 alleging wages were owing from RDI;
- the bookkeeping service used by RDI issued a Record of Employment (“ROE”) dated Sept. 3, 1998 indicating that Kichintuka had quit his employment and further that the total insurable earnings were \$22,390.71;
- the bookkeeping service issued an amended ROE dated Nov, 5, 1998 which indicated that the total insurable earnings were \$5,707.90;

Kichintuka alleges in his appeal that the ROE dated Sept. 3, 1998 is correct and is proof that his earnings were \$22,390.71. Kichintuka further alleges that he was overcharged for camp costs as he did not quit and has witnesses as well as documents from hospital which would indicate the real reason he stopped working for RDI. Kichintuka further alleges that he was

paid by the number of trees planted and not by an hourly rate. Kichintuka finally alleges that RDI has produced false evidence with respect to the advances given and received by Kichintuka.

RDI submits that the conclusions reached in the Determination by the delegate of the Director are supported by the documentation provided during the investigation. RDI further submits that the tally records initialed by Kichintuka clearly indicate the amount of trees planted by Kichintuka and the price to be paid by RDI. RDI further submits that the ROE dated Sept. 3, 1998 was incorrect and as soon as they became aware of that fact, they took steps to have an amended ROE issued. RDI finally submits that the deductions from Kichintuka's wages were authorized in the employment contract signed by him.

The delegate of the Director submits that Kichintuka has not produced any evidence to support his allegations.

ANALYSIS

The burden of establishing that the delegate of the Director erred in the Determination rests with the appellant, in this case, Kichintuka.

The information supplied on appeal by Kichintuka consists of a number of generalized allegations and statements which are not supported by any substantive evidence being provided.

Section 114 (c) of the *Act* allows the Tribunal to dismiss an appeal if it is "...frivolous, vexatious or trivial or is not brought in good faith." Black's Law Dictionary (6th Edition) defines 'frivolous' as:

"a pleading (which) is clearly insufficient on its face and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purpose of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense."

Similarly, a frivolous appeal is defined as:

"...one in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed."

As noted above, the appellant bears the onus of proving its case. To have some prospect of meeting that onus, the appellant must submit some evidence or argument which challenges the material points in the Determination. When I review the Determination, the submissions of the

appellant, the submissions of RDI and the delegate of the Director, I find that this appeal is devoid of merit as Kichintuka has not made any submission nor given any evidence to challenge or controvert the findings made by the delegate of the Director in the Determination. I also find that Kichintuka has not challenged the rationale set out in the Determination.

For all of these reasons, I dismiss the appeal of Kichintuka under Section 114 of the *Act* as I find that it is a frivolous appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated February 12, 1999 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal