

An appeal

- by -

William Sleigh operating as U-Haul Co (Canada) Ltd.
("U-Haul")

- 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: April D. Katz

FILE No.: 2001/4

DATE OF DECISION: April 26, 2001

DECISION

SUBMISSIONS:

William Sleigh	on behalf of William Sleigh operating as U-Haul Co (Canada)Ltd.
Colleen Neill-Levesque	on her own behalf
Ron Carriere	on behalf of the Director

OVERVIEW

In a Determination dated December 8, 2000, the Director of Employment Standards, the “Director”, found that William Sleigh operating as U-Haul Co (Canada) Ltd. (“U-Haul”), owed Colleen Neill-Levesque (“Neill”) \$5,451.66 in wages, vacation pay and interest.

ISSUE

Did the Director err in finding that Neill was an employee of U-Haul?

ARGUMENT

U-Haul argues that U-Haul was not given an opportunity to present the records from the Company’s head office before the Determination was made. U-Haul argues Neil was either not an employee, or not at work when she reports she was or was an independent contractor working under an agreement to share profits. Neill argues that she worked as an employee and was not paid for the hours worked. The Director’s Delegate argues that the appeal does not reveal any new evidence that was not considered in the Determination and that no error was made in the Determination.

FACTS

Neill worked for U-Haul in 1999. U-Haul management told Neill that the business was not doing well and she agreed to work at the 4th Avenue location starting on January 24, 2000 as the sole office staff with a title of Receptionist. She answered the phone completed contracts for rentals, washed trucks that were returned and fuel the trucks. Neill provided a list of the hours worked from January 24, 2000 to May 21, 2000.

The Director’s Delegate asked U-Haul for employment records with respect to the complaint. U-Haul first stated that Neill was not employed by U-Haul. U-Haul stated that the records would verify her status but the records were with the parent corporation and the Delegate would need to wait for them. The records were not produced to the Delegate or for this Appeal.

ANALYSIS

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the evidence from the appellant must demonstrate some error in the Determination, either in the facts accepted, the factual conclusions reached or in the Director's analysis of the applicable law.

U-Haul agreed that Neill had come in and answered the phone but denied that she was an employee. Then U-Haul stated that Neil did not work all the hours she claimed. U-Haul indicated that there were witnesses to support that Neill was not there when she said she was. These witnesses were not able to confirm dates and incidents. U-Haul made several allegations against Neil's character but did not provide any concrete evidence about the activities in the work place. Neill provided witnesses including staff at the U-Haul head office who confirmed that she answered the phone whenever they called on a business day.

U-Haul head office stated that their records showed Neill was an employee of U-Haul. U-Haul did not produce any payroll records for Neill's employment.

U-Haul argued on the Appeal that Neill was in business as a self employed manager and not an employee. U-Haul argued that Neill knew that business was in trouble and that she could not be paid unless she generated enough business. U-Haul paid Neill something when there was money paid to U-Haul.

U-Haul has provided no evidence to refute the evidence provided to the Delegate. The only evidence to consider are the allegations to discredit Neill. Neill's witnesses on whom the Delegate relied include U-Haul's own head office staff. Their evidence is not disputed.

CONCLUSION

Based on the evidence presented I find no evidence on which to cancel or vary the Determination. U-Haul has failed to meet the evidentiary burden on it to support a successful appeal. The appeal is denied

ORDER

Pursuant to section 115 of the *Employment Standards Act*, the Determination dated December 8, 2000 is confirmed.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal