

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-

Paul Handy dba Handy Contracting
("Handy")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: C. L. Roberts

FILE NO: 1999/57

DATE OF HEARING: April 26, 1999

DATE OF DECISION: May 3, 1999

DECISION

APPEARANCES

For the Director: G. Omstead, K. Luttmer
For Paul Handy: G. Worobec, Barrister & Solicitor
Ross Emery appeared on his own behalf

OVERVIEW

This is an appeal by Paul Handy dba Handy Contracting ("Handy"), pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination issued by the Director of Employment Standards ("the Director") January 12, 1998. The Director's delegate determined that Handy contravened Sections 17 and 18 of the *Act* in failing to pay Ross Emery ("Emery") wages when they became due, and Ordered that Handy pay Emery \$2752.47.

ISSUES TO BE DECIDED

The issue on appeal is whether the Director's delegate erred in determining that Handy owed Emery for wages in the amount found, and his entitlement to three commissions.

Handy did not dispute that wages were owing to September 20, that 4% vacation pay was owing on wages, and that the "Vivian" commission was owing.

FACTS

The facts, as found by the Director's delegate, are as follows: Emery worked for Handy from May 1, 1998 until September 30, 1998 as a salaried plus commissioned salesperson. Emery filed a complaint, contending that Handy had not paid commissions, had withheld his last paycheque, and that several miscellaneous costs had been incurred on behalf of the employer but had not been repaid.

The Director's delegate noted that Handy "declined involvement in this investigative process."

The Director's delegate determined that Emery was an employee, even though his job title was "Western Regional Manager," and determined that he was owed wages, commissions and vacation pay in the amount of \$2,752.47.

ARGUMENT

Handy contends that the Director's delegate erred in finding that he had declined involvement in the investigative process, and says that his position on Emery's claim was communicated to the delegate.

The Director was represented at the hearing by two delegates who were not involved in the original investigation, and they had no documentary evidence supporting the statement that Hardy had declined involvement.

Handy also disputed the commissions owing, with the exception of the "Vivian" commission.

Handy conceded that Emery was an employee until September 20, at which times he alleges that Emery abandoned his position.

ANALYSIS

Because of the difficulty in determining whether Handy was contacted and in fact refused to participate in the investigative process, I find it appropriate that the matter be referred back to the Director for further investigation.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination, dated September, 1998 be sent back to the Director to reconsider the following issues:

- * whether Emery abandoned his position on September 20; and
- * whether commissions are owing in respect of jobs for Lister, Emery/Sullivan and Wise.

I direct that the Director undertake this reconsideration on an expeditious basis.

There is no dispute that wages are owing for the period September 1 to September 20, that the commission for Vivian is owing, and that vacation pay is owed on the total wages owing. I confirm the Determination in respect of those issues. The amount owing in which there is no dispute must be paid together with such interest as may have accrued, pursuant to Section 88 of the Act, since the date of issuance.

C. L. Roberts
Adjudicator
Employment Standards Tribunal