

An appeal

- by -

Jody's Fine Foods Inc.  
("Jody's")

- 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.:** 2002/5

**DATE OF DECISION:** May 15, 2002

## DECISION

### SUBMISSIONS:

Jody Claman	on behalf Jody's Fine Foods Inc.
Jean-Pierre Cote	on his own behalf
Victor Lee	on behalf of the Director

### OVERVIEW

Jody's Fine Foods Inc. ("Jody's"), a catering and food business, is appealing the Determination of the Director, Employment Standards ("Director") dated December 12, 2001. The Determination found that Jody's owed Jean-Pierre Cote, ("Cote"), 5 weeks wages. Cote had a business that supplied Jody's prior to Cote becoming a consultant. Cote had a number of outstanding invoices when his employment commenced. Cote continued to submit invoices for supplies while he was an employee. Jody's felt Cote had been paid in full and Cote believed his invoices for supplies were paid but not all of his wages.

### ISSUE

Does Jody's owe Cote wages within the meaning of the *Employment Standards Act* ("Act")?

### ARGUMENT

Jody's argues that Cote was paid in full at the end of his 9 weeks of employment and that there are no outstanding wages.

Cote argues that he received two wage cheques for \$2000 and that Jody's owes him \$2500 for 5 weeks work.

### THE FACTS AND ANALYSIS

In an appeal the evidentiary burden is on the appellant to show that the Director's Determination has errors of fact or law. The appellant in this appeal is Jody's. The Director's Delegate asked to amend the Remedy section of the Determination to reflect the Remedy ordered was against Jody's and not Fanny Fabrics Ltd. I find that this was an error and should be amended. I find that the error does not go to the merits of the Determination or the appeal.

Jody's argues that the Delegate did not consider the matters raised in the employer's letters to the Director. I find that the Determination deals with all the issues raised in the letters on the file. The letters do not contain new evidence.

The Jody's does not dispute the finding that Cote was employed from November 1, 2000 to January 7, 2001 for a weekly wage of \$500.

The factual question in dispute was whether Cote was paid all his wages. Jody's did not provide any new evidence. Cote and the Director's Delegate provided copies of invoices and copies of cheques paid to Cote and Cote's business. There are 8 invoices for supplies. Some are dated some are not. Some are on preprinted forms and hand written some are computer generated. The copies of the invoices provide the following information.

Date	Invoice Number	Amount	Item
September 28, 2000	892468	\$ 148.96	Food
September 28, 2000	892462	\$1046.50	Food
No date	892459	\$ 665.10	Food
October 12, 2000	892460	\$ 234.56	Food
No date	computer generated	\$2577.73	Mixed
December 15, 2000	computer generated	\$2036.80	Mixed
No date	computer generated	\$ 721.61	Mixed
TOTAL		\$7431.26	

The copies of the cheques provide the following information.

Date	Cheque Number	Amount
October 12, 2000	140	\$ 898.94
October 30, 2000	NSF	\$1205.89
November 3, 2000	180	\$1422.03
November 10, 2000	218 Replacing NSF	\$1205.89
December 28, 2000	326	\$1036.50
January 5, 2001	499	\$2577.73
TOTAL		\$7141.09

From the evidence, Jody's still owes Cote's business over \$290. Jody's did not dispute the invoices or the cheques. Wage payments were not made as part of payment for supplies.

Jody's did not provide any additional cheques that were payable to Cote's business. There were two additional cheques paid to Cote personally for \$1500 and \$500. The Delegate determined that these were the only cheques for wages during Cote's nine weeks of employment. Jody's alleges Cote wanted to be paid in cash. There is no evidence of any specific cash payments at any specific time.

The Delegate pointed out in the Determination that the responsibility of keeping records of wages earned and paid is on the employer. Jody's did not provide any additional records beyond the cheques paid to Cote's business and to Cote personally.

Jody's does not dispute the findings that Cote was employed, the time period of employment or the salary he was to be paid.

**CONCLUSION**

Based on the evidence presented I find no basis on which to vary or cancel the Determination. Jody's has not discharged the onus on it to demonstrate an error in the Determination. I deny the appeal and confirm the Determination

**ORDER**

Pursuant to section 115 (1)(a) the Determination dated December 12, 2001 is confirmed.

---

**April D. Katz**  
**Adjudicator**  
**Employment Standards Tribunal**