

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 -

Leslie Tzetzos
operating Kost Les Services
("Tzetzos")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO: 96/276

DATE OF HEARING: **JULY 26, 1996**

DATE OF DECISION: **July 31, 1996**

DECISION

APPEARANCES

Leslie Tzetzos on her own behalf
Sherri Forman on her own behalf
Gillian MacGregor for Director of Employment Standards

OVERVIEW

This is an appeal by Leslie Tzetzos operating Kost Les Services (“Tzetzos”), under Section 112 of the *Employment Standards Act* (the *Act*), against Determination No. CDET 001728. The Determination was issued by a delegate of the Director of the Employment Standards on March 28, 1996 and shows wages owing in the amount of \$585.85 payable by Tzetzos Sherri Ann Forman (“Forman”).

Tzetzos argues that she did not employ Forman and, therefore, does not owe her any wages. Rather, Tzetzos says that after 4 days testing Forman’s skills she decided not to employ her as a bookkeeper.

I have reviewed and considered the written submissions made by Tzetzos and Forman and the information provided to the Tribunal by the Director’s delegate. In addition, I have considered the evidence I heard at the hearing. I conclude, on the balance of probabilities, that Tzetzos does owe to Forman as set out in the Determination.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

- (i) Was Forman an employee as defined under Section 1 of the *Act* ? and, if so,
- (ii) Whether Tzetzos owes wages to Forman as set out in the Determination.

FACTS

Tzetzos sought the services of a part-time, permanent bookkeeper/office assistant through the Canada Employment Centre in Squamish. The vacancy posted at the Centre offered a wage of \$9.00/hour. Required qualifications included: knowledge of Windows; Simply Accounting; basic knowledge of accounting. The notice described the duties as assisting the owner with bookkeeping and clerical duties. It also stated: "Assist owner with bookkeeping duties. May lead to full time work with more responsibilities." Forman applied for the position.

Forman says that she worked at least 55 hours for Kost Les Services between September 6 and September 27, 1995 and she also worked during August, 1995 but does not have a record of the hours she worked during August.

Tzetzos claims that there was no employment relationship with Forman. Rather, she says, after testing Forman for several days, she informed Forman that "... she would not be suitable for the position and that she needed to upgrade her skills." According to Tzetzos' evidence at the hearing, there were three prerequisites for the position: familiarity with Simply Accounting for Windows; bookkeeping experience and the ability to work without supervision.

Tzetzos gave evidence that she told Forman during her interview that she would be paid a "limited amount" for testing, although she did not mention a specific amount. Tzetzos also testified that by the end of the third training session she told Forman she was not happy with her abilities, but was "... still willing to consider her for the position" and asked her to attend a fourth training session on September 18, 1995. According to Tzetzos, this session lasted between 1/2 day to 1 day and both she and Forman worked through a bank account reconciliation together.

Tzetzos testified that Forman worked in her store on September 26, 1995 for "... a couple of hours while I went up to the highway to give my husband a ride back to town." She also stated that she "... may owe her for hours that she worked in the store."

When Tzetzos submitted her appeal to the Tribunal on April 22, 1996 she included a letter with the following statement:

She (Forman) was not competent ... although she claimed she was. She made many believable excuses for her lack of abilities, which at the time I believed. I now believe that she had totally misrepresented herself to me.

Tzetzos gave evidence that "... there was no doubt in my mind that Sherri (Forman) had not completed the course in Simply Accounting for Windows."

Tzetzos says that at the end of Forman's four testing sessions on September 18, 1995 she "... suggested to her that she needed some upgrading and that our local college had some excellent courses." Tzetzos says that after that date she allowed Forman to come to her home to work on the computer to become more familiar with the software. Tzetzos did this, because "by this time we had become quite friendly and ... I felt a little sorry for her and was glad to help out if I could."

According to Tzetzos' evidence, she was willing to believe that there was some confusion in Forman's mind about the difference between "Accpac Simply Accounting" and "Simply Accounting for Windows"

Tzetzos paid Forman (by cheque on September 20, 1995) a total of \$104.00 which, she says, was based on four training sessions of 4 hours each at an hourly wage of \$6.50 (4 x 4 x \$6.50 = \$104.00).

Forman says, she enrolled in a Simply Accounting for Windows course at Bandylian Business Centre in Squamish at a cost of \$193.67 and submitted a copy of a diploma issued to her by Bandylian upon completion. She says that at the time she enrolled at Bandylian she "... had not started work yet, as Leslie (Tzetzos) wanted to update her computer for Windows."

Foreman submitted a letter dated July 12, 1996 from Robin Cyr ("Cyr") which confirms that Forman attended a course in Simply Accounting, which Cyr instructed, on June 20, 22, 27, 29 and July 4, 1995. Tzetzos submitted a letter dated May 29, 1996 from Bandylian Computer Services which states that Forman attended the Simply Accounting courses between October 18 and 27, 1995. The certificate of completion issued to Forman by Bandylian does not contain any dates. Forman also submitted confirmation of her registration for Simply Accounting/Windows course on June 20, 22, 27, 29 and July 4, 1995.

Forman testified that when she was hired by Teztzos in early August, 1995 she agreed to be trained for two days without being paid. She also testified that she worked on filing, photocopying and organizing the office while the computer was sent to Vancouver for repairs. Forman provided copies of notes she had made while receiving instructions from Tzetzos about office procedures and bookkeeping practices at Kost Les.

Forman says that when she began working with Kost Les she "... did a lot of organizing the office, as papers were everywhere and the bookkeeping had not been done since May." She also says that Tzetzos told her that "... she decided to take extra time to train me properly because the previous girl made so many errors" She also testified that "I never denied that I needed help."

Forman's evidence was that when she complained on September 29, 1995 to Tzetzos about not getting paid, Tzetzos replied "Your training period is over. You'll get \$7.00/hour." This gave rise to a lengthy telephone conversation which concluded with Tzetzos asking Forman to come to the office the next morning to discuss the matter further. When Forman arrived the next morning (September 30, 1995), Tzetzos gave Forman a cheque dated September 20, 1995 in the amount of \$104.00.

ANALYSIS

The Reason Schedule attached to the Determination concludes that Tzetzos owes Forman wages. There are two key reasons for that conclusion:

(i) Section 1 of the Employment Standards Act the definition of an employee is:

b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,

c) a person being trained by an employer for the employer's business,

and

(ii) That the employee was being trained for the employer's business is agree to by both the employer and the employee. The employee claims that she was performing work for the employer while she continued to learn the work. The employer was merely doing a personal favor to her in allowing her to play about with her computer. The employer's claim that the employee set the bookkeeping back for six weeks due to her being there. That statement is supportive of the employee's claim that her tenure at the employer was from late August to late September, 1995.

I find that I concur with the reasons set out in the Determination. After a careful consideration of all the oral and written evidence, I find that I am unable to accept Tzetzos' argument that Forman was not employed by her.

I found Forman's evidence to be both candid and unchanged throughout her written submission, her oral evidence and throughout cross examination. She acknowledged that she needed help and was willing to learn. I note that the vacancy notice at the Canada Employment Centre stated that the wage rate was \$9.00 per hour and also stated that the position would "assist the owner with bookkeeping and clerical duties." The position was described as a "junior position" and that the "employer will consider student." There is nothing in the evidence to show that a wage rate other than \$9.00/hour was agreed to by Tzetzos and Forman.

I do not accept Tzetzos' argument that Forman misrepresented herself in her resume. The resume which Forman gave to Teztzos states "Introductory knowledge of WordPerfect ... and Simply Accounting for Windows." The evidence shows that Forman completed the Simply Accounting for Windows at Bandyland on July 4, 1995. Thus her resume describes her skills and abilities accurately.

While it is clear Tzetzos was not satisfied with Forman's skills and ability, that does not mean that no wages are owed to Forman for the hours she worked. I find Forman's records of hours worked to be reliable and preferable to those offered by Tzetzos in her written submission.

ORDER

I order, pursuant to Section 115 of the Act, that Determination No. CDET 001728 be confirmed.

Geoffrey Crampton
Chair,
Employment Standards Tribunal

GC:sr