



An appeal

- by -

Alexander Crabbe, a director of "A Taste of the Sea" Enterprises Ltd.
("Crabbe")

- 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: W. Grant Sheard

FILE No.: 2001/61

DATE OF DECISION: May 2, 2001

DECISION

SUBMISSIONS:

Alexander Crabbe on his own behalf and on behalf of A Taste of the Sea Enterprises Ltd.

John Dafoe on behalf of the Director

OVERVIEW

This is an appeal based upon written submissions by Alexander Crabbe on his own behalf and as a director or officer of the corporate employer, A Taste of the Sea Enterprises Ltd. (the “Company”), pursuant to Section 112 of the Employment Standards Act (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on December 20, 2000 wherein the Director found that the Company had contravened Sections 17, 18, 40 and 58 of the Act and directing Crabbe to pay wages and interest to an employee, Barb Fearnside (“Fearnside”), in the sum of \$2,557.67, and to another employee Marisa Gleave (“Gleave”), in the sum of \$430.87, for a total payable of \$2,988.54.

ISSUE

Has the appellant employer met the onus upon it to demonstrate, on a balance of probabilities, that the Determination was made in error?

ARGUMENT

The Employer’s Position

Mr. Crabbe says in his appeal form dated and filed January 12, 2001 that he required a further 30 days to present his case. He asserts that there were errors made in the finding of facts and that there were other facts which were not considered.

In this submission, Mr. Crabbe explains that he works in Chetwynd, B.C. while the employer’s business and records are in Smithers, B.C., approximately 500 miles away. He states that the time, distance, and inability for him to take time off work made it impossible for him to submit anything to the delegate earlier (apparently before the determination was made).

In a further written submission dated and filed January 16, 2001 Mr. Crabbe asserts that the claims of both employees are erroneous and fabricated. He says that he has bills from wholesalers that will prove this (but none are filed). He further states that instructions given to one of the employees, the manager, were not followed.

The Director's Position

In a written submission dated February 13, 2001 and filed, the Director's delegate notes that no further evidence was presented by Mr. Crabbe as he claimed he would in his appeal dated January 12, 2001 and so it is not possible to comment on the value or relevance of such evidence. The delegate further notes that a good deal of the delay in his rendering his determination in the first place was due to waiting for submissions and documents from Mr. Crabbe which never were forthcoming. Anticipating that such documentation would ultimately be provided by Mr. Crabbe, the delegate submits that the appellant should not be allowed to "sit in the weeds" by failing or refusing to provide material during the investigation and later providing it on appeal. The delegate refers to this Tribunal's decisions in Tri-West Tractor Ltd., BC EST #D268/96 and Kaiser Stables Ltd., BC EST #D058/97, in support of this submission. The delegate says that the onus is on Crabbe to provide evidence that would prove he was unable to access this information during the investigation and, in the absence of such proof, he should not be allowed to rely on such evidence in this appeal.

The Employees' Position

The Employees did not file submissions on this appeal.

THE FACTS

The Employer operated a retail fish store in Smithers, B.C. during the summer of 1999. Fearnside was hired by Crabbe, the sole director of the corporate employer, as he resided in Chetwynd, B.C. at the time. Fearnside and the employer agreed that Fearnside would be paid cash out of the store's receipts. Fearnside worked from April 23, 1999 to July 16, 1999. Gleave was hired to work in the store as a sales clerk from June 28, 1999 to August 19, 1999. Gleave was dismissed when the employer closed the store on August 19, 1999.

Fearnside and Gleave provided the delegate with records indicating their hours worked and wages paid to them. Fearnside advised that she was promised \$8.00 per hour and Gleave claimed that she was promised \$7.50 per hour. The Employer acknowledged that there were no payroll records for Fearnside because she was to work a regular 40 hour week and be paid cash. Crabbe indicated to the delegate in his investigation that Gleave was supposed to be paid by cheque with regular statutory deductions but he failed to provide the delegate with documentary evidence of this or an explanation of why this did not occur. The Employer did not comment to the delegate on the hourly rates claimed by the Employees. The Employer told the delegate that he would provide invoices from suppliers and bank records to show that Fearnside received more pay than she reported in her claim, but he failed to deliver such evidence.

The Director's delegate found that, in the absence of any documentary evidence to the contrary, the Employees' records accurately reflected their hours of work and the amounts they had been paid and he accepted their evidence on the hourly rates they were to be paid. The Director's

delegate found that Fearnside was owed \$2,332.03 in wages plus \$225.37 in interest for a total due of \$2,557.67 and that Gleave was owed \$392.90 in wages plus \$37.97 in interest for a total due of \$430.87. The total amount of the determination, for both Employees, was \$2,988.54.

THE ANALYSIS

This Tribunal has consistently stated in a variety of decisions that the onus is on the appellant to demonstrate, on a balance of probabilities, that an error was made in a determination if a determination is to be varied, cancelled, or returned for further investigation. In the present case it is not necessary to consider the Director's submission that the appellant should not be allowed to "lie in the weeds" because no new evidence has been filed. The appellant submitted that bills from wholesalers would be provided to prove his assertion that the Employees' claims were erroneous and fabricated, but he failed to file such material. The appellant's bare assertion of error and that the Employees had fabricated clearly does not establish any error on a balance of probabilities. I find that the appellant has failed to meet the onus upon it.

ORDER

Pursuant to section 115 of the Act, I order that the Determination of this matter, dated December 20, 2000 and filed under number 038-647, be confirmed.

W. GRANT SHEARD

**W. Grant Sheard
Adjudicator
Employment Standards Tribunal**