

An appeal

- by -

Steven Houle
("Houle")

- 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.: 2001/70

DATE OF HEARING: April 27, 2001

DATE OF DECISION: May 4, 2001

DECISION

APPEARANCES:

Stephen Houle	on his own behalf
Brad Webster and Nathan Webster	on behalf of Brad Webster operating as Viper Collision and Salvage
Karyn Luttmer	on behalf of the Director of Employment Standards

OVERVIEW

Steven Houle, “Houle” filed a complaint claiming unpaid wages from Brad Webster operating as Viper Collision and Salvage (“Viper”). The Determination was issued on January 16, 2001 and concluded that the Delegate did not have enough evidence to conclude that any wages were owed. Houle is appealing the Determination.

ISSUE

Did the Director of Employment Standards (“Director”) err in concluding there was insufficient evidence to support a finding that wages were owed?

ARGUMENT

Viper argues that they did not have an employment relationship with Houle. They agree that on a few occasions they had some work which offered to Houle and paid him for it when the work was completed. Viper indicates that Houle had keys to the Premises because he was allowed to sleep in the shop.

Houle argues that he opened and closed the shop each day and should be compensated for being there.

THE FACTS AND ANALYSIS

In an appeal the evidentiary burden is on the appellant to show that the Director’s Determination was in error. The facts in this matter are not in dispute.

Houle states that he attended the business every day from the summer 1998 until he quit in 2000. He opened the building in the morning and locked it at night. He had keys to the Premises and took messages from some customers for John Mueller. John Mueller was Brad Webster’s

partner in the business until May 1, 2000, when John Mueller became the sole owner of the business.

Houle is handy and enjoys doing the kind of body work that was done for the business. If there was work that Houle could do he was offered the work and paid after it was done. There was very little business and John Mueller was at the Premises on an irregular basis.

For some of the period in question Houle was allowed to live at the business address. Houle is seeking compensation for all the time he was at the Premises and not paid.

Viper has regular employees at the auto repair shop. Viper's arrangements with those employees is to be paid 1/2 monthly. There is a regular payroll and regular salaries.

Houle was not able to identify a time when he and any of the representatives of Viper came to an employment agreement. There was no agreement that Houle was responsible for opening and closing the shop. There were no agreed rates of pay. There were no agreed days off. When Houle was asked to perform work it was ad hoc and related to the vehicle in the shop at the time. There were weeks in between work. Most of the time there was no work in the shop.

CONCLUSION

Based on the evidence presented I find no basis on which the Delegate could conclude that Houle was Viper's employee. Houle has not discharged the onus of proof required to set aside the Determination. I confirm the Determination and deny the appeal.

ORDER

Pursuant to section 114 (1)(a) the appeal is dismissed. Determination ER: 092017 dated January 16, 2001 is confirmed.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal