

An appeal

- by -

Sheena A. Gallagher
("Gallagher")

- 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: John M. Orr

FILE No.: 2002/142

DATE OF DECISION: May 23, 2002

DECISION

OVERVIEW

This is an appeal by Sheena A. Gallagher (“Gallagher”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) from a Determination dated February 28, 2002 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 of the *Act*, the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

Gallagher was employed by Supreme Building Maintenance Ltd. (“Supreme”) and made a claim that she had not been paid the minimum 4 hours per shift as required by Section 34(2) of the *Act*. Supreme submitted that Gallagher was a school student and that she was therefore only entitled to a minimum 2 hours pay per call-out.

A Delegate of the Director investigated the matter and determined that Gallagher was a student and section 34(3) of the *Act* applied and that Gallagher was not entitled to any further wages. Other outstanding issues in regard to payment of wages had been resolved.

Gallagher appeals and submits that she was not a student and that the witnesses interviewed by the Director’s Delegate had given incorrect information.

ANALYSIS

Ms Gallagher sets out in her appeal a number of disagreements she has with the evidence given by the witnesses interviewed during the investigation. However, the essence of her submission is that she denies telling anyone she was attending school. This is not new information and she does not submit that the Delegate misunderstood her point of view.

The Delegate conducted a thorough investigation. In addition to interviewing the manager he also interviewed four other supervisors. The Delegate found the witnesses to be credible and he was satisfied based on all the information before him that the employer was seeking to employ a school student to work less than 4 hours per day. He concluded that there was a preponderance of evidence that Gallagher was hired as a student.

Section 34 (3) of the Act provides that:

- 34 (3) Despite subsection (2) (a), a school student reporting for work on a school day is entitled to be paid for a minimum of 2 hours at the regular wage in the circumstances described in that subsection.

The Delegate concluded that this subsection applied and that there were no further wages owing to Gallagher. Ms. Gallagher’s appeal raises no new issues. She simply disagrees with the evidence given by or on behalf of the employer. I am satisfied that the Delegate performed the investigation appropriately, assessed the credibility of witnesses and came to a reasoned and reasonable conclusion.

I am not satisfied that the appellant has persuaded me that the Determination is wrong in fact or law and therefore it will be confirmed.

ORDER

I order, under section 115 of the *Act*, that the Determination dated February 28, 2002 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal