

An appeal

- by -

Safari Pets & Aquatics Ltd.
("Safari")

- 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.: 2001/65

DATE OF HEARING: April 24, 2001

DATE OF DECISION: May 4, 2001

DECISION

APPEARANCES:

Sean Muhlack	on his own behalf
D. Laurence Armstrong	on behalf Safari Pets & Aquatics Ltd.
Karyn Luttmer	on behalf of the Director, Employment Standards

OVERVIEW

Safari Pets & Aquatics Ltd. (“Safari”) is appealing the Determination of the Director, Employment Standards (“Director”) dated December 21, 2000 which found that Sean Muhlack (“Sean”) was owed \$951.18. Sean was a high school student on spring break who sought work experience on a volunteer basis with the hope of future employment. Safari considered him a volunteer throughout the period.

ISSUE

Did the Director err in concluding that Sean was an employee entitled to wages?

ARGUMENT

Safari argues that Sean was acting on a voluntary basis when he came to Safari each day. Safari did not consider Sean an employee until they called him to work some shifts after his spring break. Sean was paid in full for all the shifts he was called in to work.

Sean’s position is that he asked if he could volunteer for a couple of days in the hope that it would result in a job. Sean asked the manager of Safari repeatedly if he liked his work and would give him a job. Sean did not intend to volunteer for his whole school break without being paid.

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 except on the fundamental issue of whether Sean’s time at Safari during the school break was as a volunteer or an employee.

Sean was introduced to the owners of Safari by one of their part time employees who is friends with both Sean’s parents and the owners of Safari. She gave evidence that throughout the period of Sean’s attachment to Safari during the school break in March 2000 she considered he was

volunteering as she had arranged with the manager of Safari. Safari's manager indicated he considered Sean came and went as a volunteer and could not be relied upon to be there during his spring break. He made sure Sean was shown how to perform task as a learning opportunity. He did not consider taking Sean on as an employee until after the spring break when he was called in specifically.

Sean gave evidence that he felt the experience had taken advantage of him. He had not intended to stay unpaid at Safari for more than a couple of days but he could not get the manager to agree to hire him until after the spring break. His evidence in cross examination was that he was a volunteer when he went to Safari during the spring break.

Sean and the manager's mutual understanding of Sean's status in the workplace throughout the relevant period was that Sean was a volunteer not an employee.

CONCLUSION

Based on the evidence presented I find that Sean was a volunteer in the work place and not an employee. I find that the Delegate erred in concluding that Sean was an employee to whom wages were payable. Based on my conclusion on the facts I allow the appeal and cancel the Determination..

ORDER

Pursuant to section 115 (1)(a) Determination ER: 098954 dated December 21, 2000 is cancelled.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal