

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1996, C. 38

- by -

SALMON ARM RENTALS LTD.
("SALMON ARM RENTALS")

- of a Determination issued by -

The Director Employment Standards
(the "Director")

ADJUDICATOR: Alfred C. Kempf

FILE NO: 96/197

DATE OF HEARING: June 24, 1996

DATE OF DECISION: August 19, 1996

DECISION

OVERVIEW

This is an appeal by Salmon Arm Rentals, pursuant to Section 112 of the Employment Standards Act (the "Act"), against Determination of the Director of Employment Standards (the "Director") issued on February 23, 1996. In this appeal the employer claims that no wages are owed to Ken Stobbe ("Stobbe").

A hearing was held in Salmon Arm on June 24, 1996. The appearances are as follows: Salmon Arm Rentals was represented by Alvin Darrah ("Darrah"); Stobbe represented himself and the Director was represented by Ken Copeland.

The appeal involved the question of whether Stobbe was an employee of Salmon Arm Rentals for the purposes of the ***Employment Standards Act***.

FACTS

Stobbe started "working" for Salmon Arm Rentals at the beginning of February, 1995. He stopped working for the company near the end of June, 1995. Stobbe performed contract decorating services (which are not the subject of the Determination) as well as performing clerking duties at a retail store owned by Salmon Arm Rentals.

Darrah testified that Stobbe was just a friend who he felt sorry for who "hung around" the store.

During Stobbe's time at Salmon Arm Rentals he received payments totalling \$2,500.00. Stobbe's evidence was that these payments were made to induce him to continue on in employment.

Darrah testified that he paid these monies out of a sense of compassion and they were not intended to be wages.

Stobbe would on occasion be the only person present in the retail premises to facilitate Darrah attending to other business. He was at these time left "in charge" by Darrah.

There is no doubt that Stobbe and Darrah were friends and would sometimes simply pass time in the store together playing cards or doing other things that commonly occur when business is slow.

Darrah provided Stobbe with a name tag which said "Ken, Salmon Arm Rentals".

Although Stobbe said that a calendar was kept with a record of his hours he was not able to produce that calendar saying that he had left it in the employer's premises. Darrah denies having seen this calendar.

Stobbe testified that during the period of his employment with Salmon Arm Rentals, he was in receipt of a self-employment assistance grant arranged with the Unemployment Insurance Commission. The Commission and his trustee in bankruptcy were told that he was employed with Salmon Arm Rentals.

Stobbe gave evidence that he was to be paid \$10.00 per hour. Darrah said that there was no agreement to employ Stobbe and that therefore there was no discussion of pay rates.

Stobbe worked in the store for more hours than the payment of \$2,500.00 would cover even if the rate of pay is based upon the minimum wage under the Act.

ISSUES TO BE DECIDED

1. Was Stobbe an employee?
2. If so, what was his rate of pay?

ANALYSIS

The onus is on Salmon Arm Rentals in this appeal to show on a balance of probabilities that the Determination by the Director was incorrect. Salmon Arm Rentals has not succeeded for the following reasons:

While in Darrah's mind there was not a formal employment agreement, it is clear that he allowed Stobbe to perform services on behalf of Salmon Arm Rentals. The Act

definition of employee includes "a person an employer allows, directly or indirectly, to perform work normally performed by an employee".

Stobbe was more than a volunteer. For example: (a) he wore a name tag provided to him by Darrah; (b) he was left in charge of the retail store for significant periods of time; and (c) he was paid something in exchange for his services.

It is my conclusion on the evidence that Darrah believed that since Stobbe was his friend and since their working arrangements were informal he had no legal obligation to him pursuant to the Act. However, the Act requires where an employee provides labour or services to an employer he must be paid for that labour and services.

I am unable to find that there was any agreement that Stobbe would be paid at \$10.00 per hour.

Salmon Arm Rentals did not provide any evidence to suggest that the hours set out in the Determination are not accurate.

For the reasons indicated above, I deny the appeal.

ORDER

In summary, I order under Section 115 of the Act, that Determination #001283 be confirmed.

Alfred C. Kempf
Adjudicator
Employment Standards Tribunal

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