

An appeal

- by -

Mark Erdos
("Erdos")

- 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: David B. Stevenson

FILE No.: 2003A/113

DATE OF DECISION: July 8, 2003

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Mark Erdos (“Erdos”) of a Determination of the Director of Employment Standards (the “Director”) dated March 12, 2003.

Erdos had filed a complaint with the Director alleging that his employer, Garth Dietrick operating a Dietz Management (“Dietz”), had contravened the *Act* by failing to pay all wages and vacation pay owing to him. A hearing on the complaint was held by the Director on December 12, 2002. The issues addressed in the hearing were whether Erdos was an employee under the *Act* and, if so, whether he was owed wages and vacation pay. The Director concluded Erdos was an employee under the *Act* and was owed wages. The Determination ordered Dietz to pay an amount of \$465.32. There has been no appeal by Dietz.

In this appeal, Erdos says the Director failed to observe principles of natural justice in making the Determination and seeks to have it varied to show a greater amount owing to him.

The Tribunal has decided that an oral hearing is not required in this matter. The appeal can be addressed through written submissions.

ISSUE

The issue is whether Erdos has shown the Tribunal is justified in exercising its discretion under Section 115 of the *Act* to vary the Determination.

FACTS

Erdos was employed by Dietz on a landscaping project from June 7 to August 2, 2003. Based on the evidence presented by the parties at the hearing, the Director found that Erdos had been paid an amount of \$5,088.50 by Dietz during the relevant period and should have been paid \$5,541.90. The Director ordered the difference, plus interest under Section 88 of the *Act*, to be paid.

ARGUMENT AND ANALYSIS

The burden in this appeal is on Erdos to show an error in the Determination.

While the appeal claims the Director failed to observe principles of natural justice in making the Determination, the real thrust of the appeal is found in the following excerpt from the appeal submission:

Their [sic] is apparently [sic] a simple misunderstanding regarding Exhibit #2 page #4 and Exhibit #2 page #9.

The appeal submission goes on to explain, in reference to the first matter, that the Director has mistakenly concluded he agreed that he had been paid \$5,088.50 by Dietz. In reference to the second matter, Erdos submits the Director made another error, in respect of an amount of \$1,245.00 that was paid by Dietz to

A-Z Pawn to purchase a snow blade. He says that Dietz received the blade, and probably still has it, and the amount should not have been included in an accounting of monies that he had received as wages or set off against wages owed.

In reply, the Director provides a fairly extensive analysis of the two matters raised in the appeal that properly should have been included in the Determination. Notwithstanding, I have considered the Director's submission on these points.

In response to the first matter, the reply notes that Exhibit #2 was a document filed by Dietz with the Employment Standards Branch mediation officer. The document claimed Dietz paid Erdos \$5,088.50 "in advances and weekly draws". The Director accepted that claim. The top of Page #4 is said to be an accounting by Dietz of the money paid to Erdos. The bottom of the same page is:

. . . a copy of a note given to the Employer by Mark Erdos during one of their discussions about payment. The original of this note was produced at the adjudication hearing and was explained by the Employer as being something that was given to him by Mark Erdos when the Employer wanted to know what Erdos felt was owed to him.

The Director's reply indicates that Erdos had an opportunity during the hearing to respond to Dietz' evidence relating to the note. The Director's reply was forwarded to, and received by, Erdos. No response to the reply was filed with the Tribunal. Accordingly, the assertion made by the Director is unchallenged and, for the purposes of this appeal, accepted. In any event, it is apparent from a reading of the Determination that Erdos had a full and fair opportunity to be heard on his claim to wage entitlement; he attended the hearing and was allowed to present his own evidence and argument, to present witnesses in support of his claim, to cross-examine the witnesses presented by Dietz and to generally respond to the case presented by Dietz.

In this appeal, Erdos claims he was paid only \$1,536.00 in wages, in effect challenging a specific finding of fact made by the Director. Except in respect of the money order, Erdos has made no argument showing how the Director erred in accepting that Dietz had paid him \$5,088.50 and, more particularly, has provided no evidence showing the intervention of the Tribunal under Section 115 of the *Act* is justified to vary that finding.

On the second matter, the Director's reply says the amount of the money order, plus the service charge on it, was found to be an advance on wages paid to Erdos and appropriately considered as part of what Erdos had received in wages from Dietz. The Director says that finding was justified by wording on the money order itself, which stated "Advance To Contract Labour Mark", and the consistency of the employer's position, that the money order was an advance, with the circumstances at the time the money order was paid. I am not persuaded that finding was wrong and reject the submission made by Erdos that the Tribunal should vary the Director's finding on that matter.

I have not been persuaded that the Director failed to comply with principles of natural justice in making the Determination, or that the Director committed any other reviewable error, and dismiss the appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 12, 2003 be confirmed in the amount of \$465.34, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal