



An appeal

- by -

Bonnie Holmes

- 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.: 2003A/128

DATE OF HEARING: July 11, 2003

DATE OF DECISION: July 15, 2003



DECISION

APPEARANCES:

Bonnie Holmes	On her own behalf
Ralph Wiley	On his own behalf

OVERVIEW

This is an appeal by Bonnie Holmes (“Holmes”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated March 25, 2003 by the Director of Employment Standards (the “Director”).

Bonnie Holmes and Ralph Wiley (“Wiley”) lived together in a common-law relationship. Wiley operated a trucking business and spent much time ‘on the road’. In 1997 they bought a home together and in 1999 they decided to open a Laundromat. Subsequently the spousal relationship was terminated and a separation agreement was signed in July 2002. In the separation agreement Ms Holmes received full ownership of the family home and Wiley received full ownership of the Laundromat business.

Holmes claimed that she was an employee of the business and entitled to wages in accordance with the provisions of the *Act*. She had been the frontline worker in the Laundromat and had accrued a substantial number of unpaid hours of work. She concedes that she would be considered a manager for the purpose of hours of work and overtime but claims that she was never paid even minimum wages for the hours she worked. Wiley asserted that the Laundromat was a joint venture partnership and that Holmes was not an employee but an owner of the business only entitled to a share of the profits if any.

The Director’s delegate assigned to the investigation of the matter determined that it was indeed a joint venture and that Holmes was a partner in the business and not an employee.

Holmes has appealed the determination. She asserts that the delegate did not consider all of the evidence that was submitted and accordingly came to the wrong conclusion. She submitted some new evidence that was not available at the time of the investigation.

ISSUES

The issue in this appeal is whether the delegate considered all of the evidence submitted and whether the conclusion reached by the delegate was reasonable based on the evidence submitted. It is also necessary to consider the new evidence to determine whether it of such significance that if considered by the delegate the delegate may have come to a different conclusion.



ANALYSIS

I have reviewed all of the written submissions and heard the evidence of Ms. Holmes and the witness who provided the “new evidence”. In analysing the submissions and the new evidence it is clear that all of the issues raised by Holmes were in fact considered by the delegate. At the hearing, every item was reviewed against the determination and Ms. Holmes was unable to identify any specific items of information that may not have been considered by the delegate. The new evidence provided no new information that was not taken into consideration by the delegate.

The witness called by Ms. Holmes confirmed, in fact, that Holmes and Wiley started the business as a partnership. She alleged however that when Holmes realised how many hours she was working she felt that the partnership was not really fair and therefore she felt entitled to wages.

While the partnership may not have been a fair arrangement it cannot be unilaterally converted to an employment arrangement by one of the parties. In my opinion the Director’s delegate considered all of the submitted evidence carefully and fairly. She analysed the credibility of the evidence appropriately and came to a reasoned and reasonable conclusion.

The delegate noted that Wiley was very much involved in signing the leases and borrowing money for the business but he was not the sole operating mind of the business. It was clear to the delegate and it was clear at this hearing that Holmes and Wiley started the Laundromat as a joint venture. There was no intent to form an employer/employee relationship. There was no persuasive evidence before the delegate or at the hearing to establish that the relationship was subsequently changed by mutual consent.

ORDER

I order, under section 115 of the *Act*, that the Determination dated March 25, 2003 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal