EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act R.S.B.C. 1996, C.113

- by -

D.B.R. Housing Society
("D.B.R. Housing " or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/244

DATE OF DECISION: June 14, 2000

DECISION

OVERVIEW

This is an appeal brought by D.B.R. Housing Society ("D.B.R. Housing" or the "employer") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on March 13th, 2000 under file number ER 086584 (the "Determination").

The Director's delegate determined that D.B.R. Housing owed its former employee, Colleen Alissa Snider ("Snider"), the sum of $43,818.66 on account of unpaid wages and interest. Further, by way of the Determination, a $0 penalty was also assessed pursuant to section 98 of the *Act* and section 29 of the *Employment Standards Regulation* on account of D.B.R. Housing's contravention of certain provisions (specifically identified at p. 9 of the Determination) of the *Act*.

In its appeal documents D.B.R. Housing requested that the Determination be suspended pending appeal, however, inasmuch as the Director agreed not to take any enforcement proceedings pending the outcome of this appeal, the Tribunal advised D.B.R. Housing (by letter dated April 12th, 2000) that the Tribunal did not find it necessary to rule on the suspension request.

BACKGROUND FACTS

D.B.R. Housing is a nonprofit society that provides assistance to physically disabled individuals. The employer's initials refer to the fact that it assists individuals who are "deaf", "blind" or who suffer from the effects of "rubella". D.B.R. Housing's operations are funded solely by the Province of British Columbia.

Ms. Snider was employed by D.B.R. Housing from November 11th, 1995 to March 31st, 1999 in two separate capacities: as an "intervenor" and as a "roommate". These latter job functions are described in the Determination (at p. 2) as follows:

> "'Intervenors' work with [D.B.R. Housing] clients on weekends acting as eyes and ears for the clients by providing 'hand over hand' assistance with the performance of tasks involved in normal home maintenance and personal care; cleaning, shopping, cooking, grooming and other related duties...
>
> [D.B.R. Housing] 'intervenors' work 24 hour weekend shifts, either one or two consecutive 24 hours shifts, from 9:00 p.m. Friday until 9:00 p.m. Sunday. The standard rate for 'intervenors' is $200.00 per 24 hour shift...
>
> As a 'roommate' [Snider] was required to provide companionship and care for the client. Most evenings [Snider] made hot chocolate, played games with the client, and assisted her with preparation for bed if required. [Snider] provided a constant presence during the night should she be required by the client.
>
> [Snider] was not paid wages for 'roommate' services. The provision of room and board was her only compensation."

As I understand the situation, Snider was hired to act as a "roommate" for a certain "Ms. L.G." (I see no reason to more specifically identify the client in these reasons)--Snider resided in LG's apartment--commencing in early January 1996. Snider also served as LG's "intervenor" on every second weekend from November 11th, 1995 to October 1997. On some of her "off" weekends during this latter period, Snider also worked as an "intervenor" for other D.B.R. Housing clients.

Snider did not act as LG's "intervenor" after October 1997, however, she was her "roommate" from January 3rd, 1996 to March 31st, 1999. During the period January 3rd, 1996 to April 14th, 1998, Snider did not receive any compensation for acting as LG's roommate beyond the provision of room and board (including utilities).

As of April 15th, 1998, Snider's job title was changed to "night attendant"--although this change did not reflect any change in job duties--and she was thereafter paid at the rate of $7.15 per hour with rent and utilities being deducted from her pay. This latter arrangement continued until her employment ended on March 31st, 1999.

Snider claimed (and was awarded) compensation based on the minimum wage ($7.00 per hour) for the period January 3rd, 1996 to April 14th, 1998 and for vacation pay and statutory holiday pay earned during the same period. As noted above, Snider's total award--including section 88 interest and taking into account a $5,400 deduction representing Snider's personal utilities paid for by D.B.R. Housing--was $43,818.66.

ISSUES ON APPEAL

D.B.R. Housing has raised four grounds of appeal in its appeal documents:

- "...[Snider] was also voluntarily a roommate with [LG] and occupied the shared leased premises as her own residence";
- "...the Determination does not properly take into account the compensation paid to, or to the order of, [Snider] on account of salary, rent, utilities and other items";
- "The Determination incorrectly concludes that [Snider] is entitled to overtime for the 24 hour weekend shifts that she worked with [LG]; and
- The amount payable under the Determination exceeds he 24-month "liability ceiling" set out in section 80 of the *Act.*

ANALYSIS

At the outset, I should indicate that D.B.R. Housing did not, although specifically requested to do so, file any detailed submissions with the Tribunal regarding the relevant facts and law. In addition to the grounds of appeal, noted above, the only other filing by D.B.R. Housing was a May 19th, 2000 letter which briefly responds to the Director's delegate's submission of May 1st, 2000. In my view, the material placed before the Tribunal by D.B.R. Housing is woefully inadequate. Nevertheless, I shall deal with each of the four grounds of appeal in turn.

The first ground of appeal is entirely without merit. Snider was hired by D.B.R. Housing to be LG's "roommate" and it was a term of her engagement that she reside with LG in LG's premises. In short, residing with, and providing support to, LG was the *essence* of Snider's employment obligation.

As for the second ground of appeal, section 21 is a complete answer. Notwithstanding section 21, the delegate, with Snider's concurrence, deducted $5,400 from the wages otherwise payable to Snider as compensation for utility costs incurred by Snider but paid for by D.B.R. Housing. D.B.R. Housing claims that Snider agreed to pay to D.B.R. Housing one-half of the rent payable for LG's premises--if such an agreement was, in fact, made between the parties, D.B.R. Housing's only remedy is to pursue compensation from Snider by way an action in the civil courts; this is not a matter that can properly be taken into account in a determination issued under the *Act.*

Even though the delegate concluded (see Determination at p. 6, last para.) that Snider was *entitled* to overtime pay for the 24-hour "intervenor" shifts, in fact, the delegate *did not award* Snider any overtime pay for any of the 24-hour shifts in question (see delegate's May 1st submission, p. 2). Thus, the employer's third ground of appeal is moot.

Finally, the Determination does not offend section 80 of the *Act*. Snider's unpaid wage complaint was filed on October 1st, 1997 and the backpay award dates as and from January 3, 1996--well within the 24-month backpay liability period set out in subsection 80(1)(a) of the *Act.*

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **$43,818.66** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

In light of the confirmation of D.B.R. Housing's unpaid wage liability, it also follows that the $0 penalty must similarly be confirmed.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal