

**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 -

Frank Haas operating as Speedy Plumbing & Rooter

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 98/086

**DATE OF DECISION:** June 3, 1998

**DECISION**

**APPEARANCES**

Bert Mueller on his own behalf

Gerry Omstead on behalf of the Director of Employment Standards

**OVERVIEW**

This is an appeal by Frank Haas under Section 112 of the *Employment Standards Act* (“the *Act*”) against a Determination which was issued by a delegate of the Director of Employment Standards on January 14, 1998.

The Determination requires the payment of \$332.91 to Bert Mueller on account of unpaid wages and interest based on a finding by the Director’s delegate the Frank Haas operating as Speedy Plumbing and Rooter contravened Sections 17 and Section 58 of the *Act*.

A hearing was held on May 22, 1998 in Victoria, British Columbia. Mr. Haas did not appear at the hearing although he was duly notified in a Notice of Hearing dated April 14, 1998.

Mr. Haas’ written submissions to the Tribunal as part of this appeal included the following points:

- Bert Mueller was employed by 456942 BC Ltd. doing business as Speedy Plumbing and Rooter;
- Frank Haas is a director of 456942 BC Ltd. having “purchased this company in March, 1997.”
- Mr. Mueller was to be paid \$50.00 per day as a training allowance for each day of training and was paid that amount for 2 or 3 days.
- Mr. Mueller is a qualified tradesperson and his “ability of work was never in question.”
- Mr. Mueller resigned his employment.

Mr. Mueller submits that he worked for Speedy Plumbing and Rooter in Victoria on May 7, 8, 9 and 12, 1997 and, as a result of not receiving any payment, he resigned from his employment. He testified that he did not receive any payment at any time during or after his employment.

The Director's delegate set out the following facts in the Determination:

On November 27, 1997, a letter was hand-delivered to the business' address. That letter requested a meeting to discuss the allegations. The letter also demanded that the company provide payroll records. On December 10, 1997, Mr. Frank Haas attended a meeting in the office of the Employment Standards Branch. Mr. Haas stated that he would review the records to determine if Mr. Mueller worked for the company. Mr. Haas was asked what the legal name of the company was and he declined to provide that name. He said that the business is a legal entity and is a numbered company but would not provide the name. He said that the names on the Demand for Employer Records was not proper. On December 16, 1997, I received a telephone message from Mr. Haas who indicated that he had no records relating to Mr. Mueller.

Taking into consideration the information provided by Mr. Mueller and the information provided by Mr. Haas, I have accepted Bert Mueller's story a feasible. Mr. Mueller's claim is for pay for 3 training days plus one day when he assisted another worker with calls.

Mr. Haas was not co-operative in providing any information with respect to this matter including the name of the company. Without the name of the company, I have decided that Frank Haas is the employer and subsequently he owes Mr. Mueller wages for hours worked.

## **ANALYSIS**

It is trite law that appellant, Mr. Haas, bears the burden of proof in this appeal.

In making this appeal, Mr. Haas alleged the Mr. Mueller was paid \$50.00 in cash for each day of training and undertook to forward a copy of a receipt to confirm that. He submitted an undated document to the Tribunal on March 8, 1998. I do not accept that document as proof of payment of wages to Mr. Mueller because it does not contain Mr. Mueller's signature and it is undated.

Mr. Haas submits, without any supporting documentary evidence, that he is a director of 456942 B.C. Ltd. doing business as Speedy Plumbing and Rooter. The Director's delegate confirmed through a search of the "Company Registry" that Frank Haas is a director of 456942 B.C. Ltd.

I accept Mr. Mueller's testimony that he did not receive any payment for the work he performed.

I find that I have not been provided with any evidence to establish, on the balance of probabilities, that the Director's delegate erred in determining that Mr. Mueller is owed wages, vacation pay and interest as set out in the Determination. However, it is clear from

the evidence that the ‘style of cause’ should be amended to reflect the fact that 456942 B.C. Ltd. was the legal entity which was operating as Speedy Plumbing and Rooter at the material time. I should also note that making such an amendment does not, in my opinion, diminish Mr. Haas’ personal liability under Section 96 of the *Act* (Corporate director/officer liability for unpaid wages).

**ORDER**

I order, under Section 115 of the *Act*, that the Determination be varied to show the ‘style of cause’ as “456942 B.C. Ltd.” and that it be confirmed in all other respects.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC:sr