

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

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.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sr