



An appeal

- by -

Gurmit Singh Kandola op. as Mission Market
(“Kandola”)

- 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: April D. Katz

FILE No.: 2001/49

DATE OF DECISION: May 17, 2001

DECISION

SUBMISSIONS:

For the Employer	Mike Newman
For the Employees	Shannon O'Reilly, Perry Leboe, Roger Leboe, Maria Leboe
For the Director	Robert Turner

OVERVIEW

Gurmit Singh Kandola operating as Mission Market ("Kandola"), appealed the Director's Determination dated December 14, 2000 in which Kandola was found to owe, 4 employees, Shannon O'Reilly, ("Shannon"), Perry Leboe, ("Perry"), Roger Leboe, ("Roger") and Maria Leboe, ("Maria"), at total of \$4,657.10 for unpaid wages and vacation pay plus interest.

The appeal states that Kandola should have been advised to have legal counsel for the investigation and intends to retain counsel.

This decision is based on the written submission from all parties including the Director's Delegate.

ARGUMENT

Kandola argues that he should have had legal counsel and had an opportunity to present evidence to an impartial "authoritative figure". He argues that the employees are related and colluded in their evidence to the Delegate.

ISSUE

Did the Director err in find Kandola owed Shannon, Perry, Roger and Maria wages and holiday pay plus interest?

FACTS

Kandola operates a neighborhood convenience store in Kelowna. Shannon worked from September 1, 1999 to February 22, 2000 as a cashier. She worked Sundays from 10 AM to 6 PM and Mondays to Fridays from 2 PM to 10 PM throughout her employment. She was paid \$1200 per month in September and \$1300 for the other 5 months. She was promised a raise to \$1400 for November, which did not happen. The Delegate calculated she was owed \$2,160.50 for minimum wages and holiday pay plus interest.

Perry was employed from November 15, 1999 to April 1, 2000 as a store clerk at the rate of \$1500 per month. There was a dispute about whether Perry quit or was fired. Kandola provided Perry with two Records of employment which differed on the hours of work. The first Record of Employment stated Perry worked 720 hours. A second Record of Employment stated he worked 990 hours. Perry's records showed he worked 1010 hours. The Delegate concluded that he was not paid for Good Friday and was owed \$53.22, was owed 4% holiday pay of \$361.58 and \$496.35 in wages plus interest.

Roger was employed from February 15, 2000 to April 1, 2000 as a grocery clerk. He worked the same hours as Perry during this time. He was paid \$1400 per month. Kandola was found to owe Roger \$561.96 plus interest for wages and holiday pay.

Maria worked from February 7, 2000 to May 1, 2000 as a cashier with special responsibility for the bakery and deli. She was paid \$1350 per month. Kandola was found to owe Maria \$432.47 for wages and holiday pay plus interest.

In the Appeal documents Kandola has not disputed any specific findings of fact. Kandola has indicated there is a different interpretation of the facts and there are facts, which were not considered. Kandola did not submit any additional facts in the appeal documents or submissions.

ANALYSIS

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the evidence from the appellant must demonstrate some error in the Determination, either in the facts accepted, or the factual conclusions reached or in the Director's analysis of the applicable law.

Section 112 provides as follows.

“112 (1) Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.

Kandola has not disputed any of the facts or conclusions of law. Shannon worked the same hours, 48 hours per week throughout her employment. Kandola did not dispute Shannon's hours of work.

Kandola provided records of hours worked for Perry and Roger very late in the investigation, which showed many fewer hours than were claimed. The records were provided after all the employees' hours and records had been disclosed to Kandola. Kandola had produced two Records of Employment for Perry. The first dated May 3, 2000 stated he worked for 720 hours and the second dated August 31, 2000 stated he worked for 990 hours in the same 5 months.

Kandola's appeal alleges collusion on the part of three of the employees. The Director's Delegate made a credibility finding in favour of the employees based on the inconsistency of Kandola's evidence on the Records of Employment submitted for the same employee. The finding against the credibility of Kandola's records was not based on the employees' information but totally based on Kandola's own evidence.

CONCLUSION

I find based on the evidence presented that Kandola has not discharged the onus of proof required to set aside the Determination. The Determination is confirmed.

ORDER

Pursuant to section 115 of the *Act*, the Determination dated December 14, 2000 is confirmed.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal