

An appeal

- by -

Vivien Evans (the "Employee")

- 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: Ib S. Petersen

FILE No.: 2001/64

DATE OF DECISION: May 23, 2001



DECISION

SUBMISSIONS:

Mr. Vivien Evans on behalf of herself

Mr. Roland Chartrand on behalf of himself

OVERVIEW

This matter arises out of an appeal by the Employee pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director issued on December 21, 2000. The Determination concluded that Vivien Evans was owed \$16.46 on account of wages.

FACTS AND ANALYSIS

The Employee appeals the determination. The Employee, as the appellant, has the burden to persuade me that the Determination is wrong.

Evans worked for the Employer, a travel agency (the "Employer"), from April 19, 2000 to September 18, 2000 as a travel agent. The delegate found that her rate of pay was \$8.00 per hour. Evans take issue with that finding. She says that she is entitled to additional commission earnings as well, based on a verbal agreement. She also says that she was not paid for work on September 17, 2000. Finally, she argues that the Employer "forced" her to agree to pay \$100 for an insurance transfer. In the result, the issues before me is whether Evans was properly compensated for her work.

This decision is being made without a hearing and from the file.

I turn first to the issue of remuneration. The delegate basically concluded that no agreement had been reached between the parties with respect to commission payments over and above the hourly rate, about which there is no dispute. In short, there were negotiations but no agreement. In her appeal, Evans says that, at the point of hire, she agreed to work for the Employer on the basis of a guaranteed hourly rate "plus 40% of all commissions earned over that base rate." That is consistent with her complaint to the Branch dated September 20, 2000. Evans expected commission earnings based on her previous experience in the industry. However, from a letter, appended to her complaint, it is clear that commission aspect of the remuneration had yet to be agreed at the time of hire: "no contract was signed at that time as Mr. Chartrand was still working on the bonus structure details" (emphasis added). There were discussions concerning commissions from time to time. In a conversation in August, Evans "reiterated the need for the bonus pay situation to be clearly defined as I had expected to see some sort of bonus payment..." (emphasis added). An employment agreement, attached to the Determination, providing for a detailed commission structure, was presented to Evans on September 18. On September 19,

Evans informed the Employer that the proposed agreement was not acceptable and, on September 20, she gave notice. In brief, in my view, the facts asserted by Evans at the time of the complaint to the Branch supports the delegate's conclusions regarding her remuneration, that there was never a "meeting of the minds" and, unfortunately for her, therefore, no agreement with respect to commission. I note, as well, that the Employer disputes that there was an agreement to pay 40% of all commissions. In the result, I agree with the delegate that Evans is entitled to the \$8.00 per hour.

With respect to the insurance fee, Evans says that she was "forced" to sign an agreement to transfer her insurance to the Employer. As I understand it, the Employer agreed to advance her the amount of the transfer fee--\$100--"by way of payment to the Insurance Council of BC on [her] behalf." The agreement further provided that the amount would become payable if Evans' employment ceased prior to April 19, 2001. Evans agrees that she is ultimately responsible for her own licence, but says that the Employer has profited from her sales and it is unfair to require her to pay the fee. In the circumstances, there is nothing to support her claim that she was "forced" to sign the agreement. The company provided an advance to her. I agree with the delegate's conclusion that Section 22(4) of the *Act*, which provides that an employer may honour an employee's written assignment of wages to meet a credit obligation, is applicable.

With respect to September 17, 2000, Evans says that she was *required* to attend a "document presentation at the home of ... another employee." She says that she was told to be there at 12:30 to help set up and greet customers going on a cruise. She did other work in connection with these customers, deliver and review travel and cruise documents, confirm transfer information etc., and did not leave until 5:00 p.m. Evans feels she should be compensated for this time. The delegate was unable to establish that she worked on the day in question. In my view, he erred. There is no dispute that she attended the function on September 17. The Employer does not seriously dispute that she performed the functions she claims she performed. The Employer says that it was "voluntary" for her to attend the "barbeque" for the customers going on the cruise and that she was aware that the Employer does not pay for attendance. In light of the fact that she did perform work, I am of the view that she is entitled to be paid for her time at the rate of \$8.00 plus the applicable interest.

Except as noted above, I am of the view that the Employee has not discharged the burden on the appeal and it is dismissed.



ORDER

Pursuant to Section 115 of the *Act*, I order that the Employer must pay Evans for her work on September 17, 2000. Otherwise I order that the Determination dated December 21, 2000, be confirmed.

Ib S. Petersen Adjudicator Employment Standards Tribunal