

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Greg Brian Sargert operating as
Knock on Wood Furniture Design
("Sagert")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/501

DATE OF DECISION: September 19, 1996

DECISION

OVERVIEW

This is an appeal by Greg Brian Sagert operating as Knock on Wood Furniture Design (“Sagert”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination NO. CDET 003565 which was issued by a delegate of the Director of Employment Standards on August 1, 1996. The Determination found that Sagert owes wages and vacation pay to Mohan Singh (“Singh”) in the amount of \$1,033.74 including interest.

ISSUE TO BE DECIDED

The issue to be decided is whether Singh is owed wages as set out in the Determination.

FACTS

The only reason given by Sagert for this appeal is:

“The being named never worked for me. Mohan Singh person that worked for me (Joe Somal) was paid.”

Sagert attached to his appeal a copy of a Record of Employment (“ROE”) for Singh which was signed by A. Gomez (W.D. Hewitt & Company Ltd.). The ROE shows that Singh worked as a labourer from March 5, 1995 to July 14, 1995.

The Reason Schedule attached to the Determination sets out the facts and rationale which were adopted by the Director’s delegate contains the following statements:

“Based on the balance of probabilities, the records of the employer are preferred over those of the complainant.”

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However, based on records obtained from the former accountant of the employer and comparing the amounts of the cheques issued by the employer with the “net” amount the complainant should have been paid

“regular wages” are owed Mohan Singh. Also, the payroll records clearly indicate that vacation pay has not yet been paid by the employer.

Based on the above, it is deemed that the employer had violated Section 18(1) of the Employment Standards Act (“Act”) by not paying wages owing to the complainant within 48 hours of termination. Vacation pay is owed as per Section 58(3) of the Act. Finally, interest is owed as per Section 88 of the Act.

ANALYSIS

As the appellant, Sagert bears the onus of demonstrating to the Tribunal why, and to what extent, the Determination is deficient or defective. Sagert has not done that. He merely asserts that Singh never worked for him, despite the fact that an ROE was issued to Singh in July, 1995

This appeal does not challenge any of the facts or reasons that are set out in the Determination.

Section 114(1)(c) of the *Act* allows the Tribunal to dismiss an appeal if it is satisfied that the appeal is “... frivolous, vexatious or trivial or is not brought in good faith.” Following my consideration of this appeal I have concluded that it falls within the criteria set out in Section 114.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination No. CDET 003565 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC:sr