

An appeal

- by -

Sukhpal Singh Sran operating as Punjabi Business Pages  
("Sran")

- 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:** Lorne D. Collingwood

**FILE No.:** 2002/013

**DATE OF HEARING:** May 28, 2002

**DATE OF DECISION:** June 17, 2002

## DECISION

### APPEARANCES

Sukhpal Singh Sran	On his own behalf
Yasmeen Nazir	On her own behalf

### OVERVIEW

Sukhpal Singh Sran operating as Punjabi Business Pages (I will use “Sran” and “the Appellant” for ease of reference.) has appealed, pursuant to section 112 of the *Employment Standards Act* (“the Act”), a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 14, 2001. By that Determination, Sran has been ordered to pay Yasmeen Nazir an amount of minimum wages with vacation pay and interest being over and above that.

Underlying the Determination is a decision that Nazir performed worked for Sran in the year 2001 and that she is entitled to be paid the minimum wage for that work. While Sran argues that Nazir has not performed any work for which he has yet to pay, he admits that the employee performed a certain amount of work in 2001 and it is clear to me that the employee has yet to be paid for that work.

The main issue which is raised by the appeal goes to the extent of work by Nazir. The Appellant argues that there is reason to believe that the employee did not perform very much work. The employee claims that she accepted an offer of short term employment and that she put in long hours selling advertising for the Appellant. The Delegate has decided that it is the employee’s version of matters which is credible. Mr. Sran, on appeal, argues that her decision is unreasonable but he does not have a case. I am therefore moved to confirm the Determination.

An oral hearing was conducted in this case with the help of a Punjabi interpreter.

### ISSUES

It is argued by the Appellant that the employee did not perform work for which she is owed additional wages. The real issue is the extent of work and that is largely a matter of credibility. The Delegate has decided that it is the employee’s version of events that is credible. I must decide whether her decision is reasonable given the evidence before her.

What I must ultimately decide is whether it is or is not shown that the Determination ought to be cancelled or varied or a matter(s) referred back to the Director for reason of an error or errors in fact or law.

### FACTS and ANALYSIS

I am not shown that the delegate is wrong on the facts of this case.

Nazir worked for Sran in 1999 and the year 2000. She sold advertising for the publication which Sran produces, “Punjabi Business Pages”. At some point in the year 2000, that employment was terminated and Nazir went to work for another company, the publisher of a magazine called “Drishtikon Global News”.

In the spring of 2001, Sran paid Nazir a visit at her home. As a result of that visit, Nazir was again employed by Sran for part of April and May, 2001.

As matters were presented to the Delegate, and are presented to me, the employer and the employee present two widely different versions of her employment in 2001. The Appellant claims that Nazir did not perform any work that entitles her to additional wages at all. It is not that Sran is claiming that there was no work at all, however. Even the employer admits that Nazir worked to collect money from customers, money owed for advertising sold by Nazir in the previous year.

What the employer is arguing is that Nazir is not entitled to be paid anything more for that work. In his view, Nazir is responsible for the customers' failure to pay for advertising sold to them in 2000 and he has met the obligation to pay through sales commissions paid in 2000. He is quite wrong on that of course. The commissions are for selling the advertising and they are for work which is in the year 2000. Time spent collecting monies for the employer in 2001 is new work and the employee is entitled to be paid for that work. The activity is labour which is clearly in the service of the employer and therefore work as that term is defined in the *Act*.

“work” means the labour or services an employee performs for an employer whether in the employee's residence or elsewhere.

So even as the employer presents matters, I find that there is work for which the employer has yet to pay the employee. There being no agreement on the rate of pay, the employee is entitled to the minimum wage.

The Determination orders the employer to pay an amount of minimum wages which is based on a record of work which was kept by the employee. (The employer did not keep a record of hours worked.) If the record is to be believed, Nazir worked a five day week and she very often worked overtime. The Appellant claims that could not possibly be as the employee was working full time for Drishtikon in April and May of 2001.

The employee did in fact work for Drishtikon in April and May of 2001. She sold advertising for Drishtikon. That company produces a magazine called Drishtikon Global News. Drishtikon does not produce a May edition of its magazine. As such the employee, does not stand to earn commissions in April and May as she normally would.

There are several witnesses and documents to confirm that Nazir, in April and May of 2001, sold advertising for the 2001 edition of Punjabi Business Pages.

The employee claims that Sran wanted her to sell advertising for him again and that is what she was hired to do on being hired in 2001. That is denied by the employer. The employer claims that the employee was only hired to collect monies owed for advertising sold for the 2000 edition of Punjabi Business Pages.

As matters were presented to the Delegate, there are not documents or witnesses to confirm that Nazir was employed for selling advertising in 2001. The Delegate had to decide credibility. That is seldom an easy task. The manner of the witness is to be considered (Is the witness clear, forthright and convincing or evasive and uncertain?) but also factors such as the ability of the witness to recall details; the consistency of what is said; reasonableness of story; the presence or absence of bias, interest or other motive; and capacity to know.

The essential task is to decide what is likely to be true in all of the circumstances. As the Court of Appeal noted in *Faryna v. Chorny* (1952) 2 D.L.R. 354, B.C.C.A.,

“The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities that a practical and informed person would readily recognize as reasonable in that place and in those conditions.”

The Delegate is satisfied that it is the employee that is credible. She found the reasonableness of Sran’s story to be wanting. She accepts that Nazir was probably hired by Sran to sell advertising, there being clear evidence that she sold advertising for 2001 edition of Punjabi Business Pages.

This case being what it is, it is not for me to second guess the Delegate but to decide whether her conclusions are reasonable or not, given the evidence before her. The Delegate has had the benefit of hearing from witnesses in the first instance.

I am satisfied that the Delegate’s finding of credibility is entirely reasonable. It is reasonable to believe that the probable explanation for the fact that Nazir sold the advertising that she did is that she was hired to do just that. It is extremely unlikely that a person would work to sell advertising for the Appellant unless she was led to believe that she was going to be paid for the work. The employee had reason to take on a second job. She stood to earn less from Drishtikon in the period in question and she stood to earn additional income by selling advertising for the Appellant.

The Appellant claims that Nazir could not spend long hours selling advertising for him because she had a full time job selling advertising for Drishtikon. I fail to see how there is any conflict. Nazir was employed by Drishtikon but it is not shown that her employment prevented her from taking on other work. What I am shown is that Drishtikon does not publish a May edition of its magazine.

As matters are presented to me, I do not in any way doubt that Yasmeen Nazir was hired by the employer for selling advertising in the year 2001. The appeal is without substance. I am satisfied that there is reason to believe that the employee worked as she claims and that the Determination should be upheld.

## **ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated December 14, 2001 be confirmed in the amount of \$3,047.68 and to that amount I add whatever further interest has accrued pursuant to section 88 of the *Act*.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**