

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 -

Darrell Roberds operating as Pacific Coast Arabians
(“Roberds”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR:	Hans Suhr
FILE No.:	97/170
DATE OF HEARING:	June 16, 1997
DATE OF DECISION:	June 17, 1997

DECISION

APPEARANCES

Darrell Roberds	On his own behalf
Lana J. Rempel	On her own behalf
Jason Smith	On behalf of Lana J. Rempel

OVERVIEW

This is an appeal by Darrell Roberds operating as Pacific Coast Arabians (“Roberds”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued by a delegate of the Director of Employment Standards (the “Director”) on March 5, 1997. Roberds alleges that the delegate of the Director erred in the Determination by determining that Lana J. Rempel (“Rempel”) was an employee and that wages were owed. The Director’s delegate concluded that Rempel was an employee and that unpaid wages in the amount of \$3,061.00, plus interest, were owed.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. Was Rempel an employee?
2. If the answer to No. 1 is Yes, are wages owed?

FACTS

The parties agree that the following facts are not in dispute:

- Roberds placed an advertisement in a “horse” magazine which read in part “ ...looking for groom/assistant trainer. Will be paid in experience and knowledge to start.....”;
- Roberds advised prospective applicants that this was not a paid position however, if, after the end of 3 months they were found suitable, they would be hired on a part time basis with a salary;
- Rempel appeared at Roberds’ farm on February 3, 1996 and left on September 14, 1996;

- Rempel did perform some cleaning out of horse stalls, watering and feeding of horses and some training of horses;
- Rempel did not pay any money to Roberds for rent, hydro or board for her 2 horses for the period February to September 1996;
- Neither Roberds nor Rempel kept any records of days or hours worked;
- Roberds did not pay any wages to Rempel during the period February 3 - September 14, 1996.
- Roberds provided a letter to Rempel in order to assist her in obtaining a bank loan. The letter read as follows:

“March 29, 1996

TO WHOM IT MAY CONCERN:

Lana Rempel has been working for us for two months. She has been a good employee and we feel that her future prospects with our company are good. She is working full time with a salary of \$1500.00 per month.

If you require further information, please do not hesitate to contact us.

Yours truly,

signed Darrell Roberds

Darrell Roberds
Pacific Coast Arabians”

The parties also made the following submissions in addition to the materials already provided in the file:

- Roberds states that he has been in “the business” for 8 years.
- Roberds further states that he clearly informed Rempel on a number of occasions that she was not performing in an acceptable manner and that she, Rempel, would not be hired on a salary basis at any time.
- Roberds further states that Rempel only performed work necessary to look after her 2 horses and, if Rempel did do any work for him, it was only 1 to 2 hours at the most each day.

- Roberds further states that Rempel approached him for the letter confirming employment as Rempel was attempting to secure a bank loan for the purchase of a trailer. Roberds further states that it was Rempel who suggested the amount of \$1500.00 per month as that was the amount required for approval of the loan.
- Roberds finally states that he permitted Rempel and her boyfriend to remain in the trailer on his farm as “he felt sorry for them and wanted to help them out”.
- Rempel states that she responded to the advertisement by telephone and followed up by mailing a resume to Roberds. Rempel further states that she presented herself in person to Roberds for an interview and at the conclusion of the interview it was left up to Rempel to advise Roberds if she was willing to accept the position.
- Rempel further states that in the period between the interview and actually arriving at Roberds farm, another telephone conversation took place between herself and Roberds at which time the amount of \$1500.00 per month salary less deductions for rent, hydro and horse boarding, leaving a net of \$500.00 per month was discussed. Based on those discussions, Rempel states she decided to accept the position.
- Rempel further states that she worked anywhere from 3 to 5 hours on an average day cleaning out stalls, watering and feeding an average of 15 horses and training horses.
- Rempel finally states that the only reason she was present at Roberds farm was because she was an employee.

ANALYSIS

The *Act* defines *work* in Section 1 as:

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

The *Act* defines *employee* in Section 1 as:

“employee includes

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,*
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,*
- (c) a person being trained by an employer for the employer’s business,*
- (d) a person on leave from an employer, and*
- (e) a person who has a right of recall”*

While Rempel and Roberds disagree on the *amount* of **work** performed by Rempel on a daily basis, there is agreement that Rempel did at least perform **some work**.

The answer to question No. 1 is that I conclude Rempel was an employee as defined in the *Act* during the period in question.

I must now turn to the question of wages owing.

The fact that Rempel resided in a trailer at Roberds farm for more than 7 months without any evidence of making any payments for rent, hydro or boarding 2 horses certainly lends credibility to the assertion that the agreement was for an amount of salary per month **less** rent, hydro and boarding costs.

If I were to accept Roberds submission with respect to his letter dated March 29, 1996 confirming Rempels employment at a salary of \$1500.00 per month, I would then be forced to conclude that Roberds was a willing participant, along with Rempel, in an attempt to fraudulently obtain a bank loan. I have not been provided with any information that any such fraudulent intent existed, therefore, I must conclude that this letter correctly sets forth that the amount of salary agreed to between the parties was to be \$1500.00 per month less rent, hydro and boarding costs for the 2 horses.

I am further satisfied that the agreed net monthly wage was to be \$500.00.

I am further satisfied that the amount of wages owed by Roberds and calculated by the delegate of the Director as set forth in the Determination are correct.

For all of the above reasons, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination be confirmed in the amount of \$3,061.00 **plus** interest calculated pursuant to Section 88 of the *Act*.

Hans Suhr
Adjudicator
Employment Standards Tribunal

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