

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 -

Debra Hantula operating as Cambie Country Garden
("Hantula")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE No.: 97/45

DATE OF **H**EARING: June 9, 1997

DATE OF **D**ECISION: June 10, 1997

The burden of persuasion in this case is on Hantula to demonstrate the conclusion of the delegate of the Director was wrong. In all the circumstances of this case, Hantula has not satisfied that burden and I find that Nikken was an employee during the period March 16, 1996 to May 3, 1996.

The *Act* takes a broad and purposive approach to what is employment. The definition of “employee” under the *Act* includes:

- (b) *a person an employer allows, directly or indirectly, to perform work normally performed by an employee*

There are two significant conclusions that flow from that part of the definition for the purposes of deciding this appeal. First, the existence of an employment relationship is not dependent on the intention of one or both of the parties, but can be established by showing work was performed (and allowed to be performed), which is identifiable as work normally performed in an employment relationship. Second, on the facts, Nikken performed work which the *Act* recognizes as work that would normally be performed by a “domestic” or a “farm worker”.

In addition to the above, the conclusion that Nikken was an employee is reinforced by other factors. First, he was asked to come to Sicamous for the specific purpose of working for Hantula in Cambie Country Gardens. Second, some of the work described in Nikken’s journal can be directly related to the business of Cambie Country Gardens, including raking around the greenhouse and seed beds, cleanup around the seed house, work on the greenhouse, stoking the heater in the greenhouse, stacking firewood for the greenhouse, work at the fruit stand, planting garlic and constructing two raised beds for planting. Third, at one point during his employment, Nikken was given an outline of what he was expected to do during the day. I accept the outline was very basic, but it does convey the notion that certain performance expectations were placed on Nikken and removes the notion he was a “volunteer”. Fourth, when he left, Nikken was paid \$109.00 by Hantula and during the period was paid another \$120.00 related to work he had performed.

As an employee Nikken was entitled to be paid for the work he performed. I sympathize with Hantula, who feels she has been betrayed by someone she sought to help, but as I explained during the hearing, my task is to review the decision of the delegate of the Director for error, either in applying the *Act* or in the factual conclusions necessary to make the Determination. I can find no error in either sense has been made by the delegate and there is no basis to change it.

ORDER

Pursuant to Section 115 of the *Act*, I order Determination No. CDET 00445, dated December 10, 1996, be confirmed.

Dave Stevenson
Adjudicator
Employment Standards Tribunal