

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 -

ABC Pipe Cleaning Services Ltd.
(" ABC " or the "Employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/173

DATE OF HEARING: June 26, 2000

DATE OF DECISION: July 18, 2000

DECISION

APPEARANCES

Mr. Carmello Intile on behalf of the appellant Employer

OVERVIEW

This is an appeal by the Employee pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on February 29, 2000. The Determination concluded that the Employer owed \$1,432.06 to Mr. Wesley Toews (the “Employee” or “Toews”) on account of regular wages, overtime wages and vacation pay.

FACTS AND ANALYSIS

The appellant has the burden to show that the Determination is wrong.

The Determination found that Toews was employed by ABC, which operates video inspection service to inspect and report on blockages or damage to storm drains and sewers. He worked for the Employer from June 23 to July 23, 1999. The Employer took the position before the delegate that Toews was not an employee. Rather he was permitted—as the Employer puts it in its appeal—to tag along with the video truck if he wished”. He was, from the Employer’s standpoint, basically there to get training.

At the hearing, Mr. Intile (“Intile”) for the Employer candidly explained the circumstances of this case. He explained that it was difficult to find and hire employees to perform the work. Through one of its sales persons, Mr. Loewen (“Loewen”), Intile was introduced to Toews, a friend of Loewen. As I understood his evidence, Toews, who was unemployed and had free time, agreed with Intile to “come to train”. Intile stated that Toews agreed that he would be paid “nothing for the training.” He was to receive training from another employee and go out with the “normal” crew. The reason Toews “did not receive a pay cheque was that there was no agreement to pay.” He was there for “learning only [and, therefore, there] was no reason to pay.” However, Intile also stated that “at the end [of the training], we’ll discuss wages.” I agree with the delegate that there was no agreement at the outset with respect to wage rates. When the employee, who had been training him quit, Toews asked for \$20.00 per hour. When the Employer was not agreeable to this rate, Toews found other employment. Intile was upset about this. In his view, Toews should have given some “warning“ and “could have given at least a couple of days.”

The Employer disputes “everything”, including the hours of work found to have been worked by the delegate, but there was little to support any disagreement with the hours. Intile did not disagree that Toews may have filled out time sheets. He stated that “he hadn’t considered it because [Toews] was not an employee.” Toews stated in a submission to the Tribunal that he handed in time sheets and the Employer, therefore, would know the hours of work. In all of the

circumstances, I find it more likely than not, that the relationship was an employment relationship.

To put it briefly, I agree with the delegate that Toews was an employee of the Employer. Based on the Employer's own evidence at the hearing, I am of the view that Toews was hired for training by the Employer for the Employer's business (see Section 1 "employee"). Whether or not there was an agreement that Toews was not going to be paid is immaterial. Such an agreement is contrary to Section 4 of the *Act* which provides that "an agreement to waive [the minimum requirements of *Act*] is of no effect". As such, he is entitled to wages. In this case, as stated by the delegate, there was no agreement with respect to the rate of pay and the minimum pay rate applies.

In the circumstances, and in any event, I am not persuaded that the Employer has met the burden to show that the Determination is wrong.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determinations in this matter, dated February 29, 2000, be confirmed.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal