

An appeal

- by -

Freshslice Operating Ltd., operating as Freshslice Pizza  
("Freshslice Pizza")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2002/219

**DATE OF DECISION:** June 25, 2002

## DECISION

### OVERVIEW

This is an appeal filed by Freshslice Operating Ltd. operating as “Freshslice Pizza” (“Freshslice Pizza”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Freshslice Pizza appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on March 28th, 2002 (the “Determination”).

The Director’s delegate determined that Freshslice Pizza owed two former employees a total sum of \$813.56 on account of unpaid wages and section 88 interest. Freshslice Pizza appeals the Determination as it relates to both of the employees, namely, Seyed-Hehdi Rezvani-Derow and Paul St. Amand.

This appeal is being adjudicated based on the parties’ (including the Director) written submissions (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

### ISSUES ON APPEAL

Freshslice Pizza says that Seyed-Hehdi Rezvani-Derow and Mr. St. Amand were “independent contractors” and not employees. Further, Freshslice Pizza says that even if they were employees, they ought not to have been awarded all of the wages credited to them by way of the Determination.

### FINDINGS

This appeal is entirely devoid of merit.

Seyed-Hehdi Rezvani-Derow and Mr. St. Amand were employed by Freshslice Pizza as pizza delivery drivers and also worked in the restaurant doing various other tasks including serving customers and making pizzas. They were required to wear company uniforms while at work. In my view, each was clearly an employee even though Freshslice Pizza took the position that they were independent contractors. I might add that whether or not Seyed-Hehdi Rezvani-Derow filed his income tax return as a contractor or an employee is quite irrelevant (I only raise this matter since Freshslice Pizza demanded that I order the production of this employee’s tax return).

In substance (as opposed to the form), the relationship between the parties was an employment relationship. Freshslice Pizza directed and controlled Seyed-Hehdi Rezvani-Derow’s and Paul St. Amand’s work activities, scheduled their hours and even undertook a form of discipline by way of withholding (unlawfully) monies otherwise due to one or both of them. I note that these employees were required to use their own vehicle, at their own cost, to make deliveries. In this case, Freshslice Pizza ought to have been ordered to reimburse them for such vehicle operating costs since those expenses were, in fact, business costs that were unlawfully foisted on the employees by their employer.

To summarize, with respect to Seyed-Hehdi Rezvani-Derow’s and Mr. St. Amand’s status, the delegate addressed the relevant legal considerations and came to an entirely correct decision given the evidence.

As for the unpaid wage claim, I note that Freshslice Pizza has placed records before the Tribunal that it refused to provide to the delegate. In response to a demand for payroll records issued on September 25th, 2000, Freshslice Pizza simply replied, by way of a letter dated October 8th, that Seyed-Hehdi Rezvani-Derow and Mr. St. Amand were each “a self-employee [sic] driver” and thus “have not been in our payroll system from start [sic]”. Further, Freshslice Pizza threatened to sue the Employment Standards Branch in the Small Claims Court if the Branch held that Seyed-Hehdi Rezvani-Derow or Mr. St. Amand was an employee.

The Demand for Records required Freshslice Pizza to produce the relevant payroll records by October 10th, 2000. Given that no records were produced, the delegate wrote Freshslice Pizza yet again, on October 20th, and reiterated her request for payroll records--none were produced. On October 26th, Freshslice Pizza wrote to the delegate and simply repeated its earlier position that Seyed-Hehdi Rezvani-Derow and St. Amand were both “hired” as a “self employee driver” [sic] and were thus not in the company’s payroll system. Freshslice Pizza also stated that it felt it was being “harassed” by the delegate and thus Freshslice Pizza would be taking legal proceedings against the delegate.

In light of the foregoing, the payroll and other records submitted by Freshslice Pizza are inadmissible under the *Tri-West Tractor/Kaiser Stables* rule (see BC EST # D268/96 and BC EST # D058/97). In the absence of any admissible evidence, there is no basis to challenge the unpaid wage awards made in favour of Seyed-Hehdi Rezvani-Derow and Mr. St. Amand.

Even if the records were received into evidence, I consider them to be unreliable and prefer the records submitted by Mr. Seyed-Hehdi Rezvani-Derow and Mr. St. Amand. Freshslice Pizza says that Seyed-Hehdi Rezvani-Derow and Mr. St. Amand ought not to be paid for non-working “break time” but there is no credible evidence before me that Seyed-Hehdi Rezvani-Derow or Mr. St. Amand took unpaid breaks where they were not required to be available for work [section 32(2)].

## **ORDER**

Pursuant to sections 114(1)(c) and 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of \$813.56 together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**