

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 -

Plateau Kitchen Limited
("Plateau")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 98/299

DATE OF DECISION: July 2, 1998

DECISION

OVERVIEW

This is an appeal by Plateau Kitchen Limited (“Plateau”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated May 7, 1998 issued by a delegate of the Director of Employment Standards (the “Director”). The delegate of the Director concluded that Tracey Trusz (“Trusz”) was owed wages and compensation for length of service in the amount of \$565.18 plus interest for a total of \$608.46.

Plateau does not dispute the compensation for length of service however, Plateau alleges that the delegate of the Director erred in the Determination by concluding that Trusz was owed wages.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the delegate of the Director erred in the Determination by concluding that Plateau owes wages to Trusz?

FACTS

The following facts are not in dispute:

- Trusz was employed as a server by Plateau from October 5, 1996 to May 10, 1997;
- Trusz was laid off for a short period after November 11, 1996 due to a fire at the restaurant;
- Plateau’s payroll records for a portion of this period were destroyed in the fire;
- Trusz kept daily records of the hours worked;

Plateau contends that they have proof that Trusz was paid for 61 hours during the period in dispute and has submitted statements alleged to have been signed by Trusz confirming those payments.

A letter dated February 11, 1998 from the delegate of the Director to Plateau, confirms that the amount of disputed wages owing to Trusz is 61 hours and invites Plateau to meet and provide records to dispute the allegations. There is no evidence that Plateau provided to the delegate of the Director the signed statements which were provided to the Tribunal

There were no submissions from either the delegate of the Director or Trusz to the Tribunal.

ANALYSIS

The burden of establishing that the delegate of the Director erred in the Determination rests with Plateau.

The Determination issued indicates that the delegate of the Director considered all of the information made available during the investigative process.

Plateau has not indicated that the information provided to the Tribunal was considered and rejected by the delegate of the Director or, even whether that information was provided to the delegate during the investigation.

Plateau has not provided any substantive evidence to support their contention that no wages are owing.

Based on the evidence provided and on the balance of probabilities, I conclude that Plateau has not established that the delegate of the Director erred in the Determination by concluding that Trusz is owed wages in the amount as set forth.

The appeal by Plateau is therefore dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 7, 1998 be confirmed in the amount of \$608.46 together with whatever further interest may have accrued, pursuant to Section 88 of the *Act*, since the date of the issuance.

Hans Suhr
Adjudicator
Employment Standards Tribunal