

**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 -

Trozzo Holdings Ltd.  
("Trozzo Holdings")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2000/254

**DATE OF HEARING:** July 4, 2000

**DATE OF DECISION:** July 20, 2000

**DECISION**

**APPEARANCES**

for Trozzo Holdings Ltd.	Mirella Trozzo
	Gina Anna Trozzo
for the individual	In person
for the Director	Joe LeBlanc

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Trozzo Holdings Ltd. (“Trozzo Holdings”) of a Determination that was issued on March 15, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Trozzo Holdings had contravened the *Act* in respect of the employment of Dorothy Roi (“Roi”) and ordered Trozzo Holdings to cease contravening and to comply with the *Act* and to pay an amount of \$74.95.

Trozzo Holdings has listed four reasons for appealing the Determination:

1. Roi was employed as a prep cook for \$7.15 an hour;
2. She had only 6 months working experience as a line cook, not three years, as found by the Investigating Officer;
3. The hours of work calculation in the Determination is wrong; and
4. The analysis done by the Investigating Officer was biased against Trozzo Holdings.

**ISSUES TO BE DECIDED**

The sole issue in this appeal is whether Trozzo Holdings has shown the Determination was wrong in its conclusions that Roi was employed by Trozzo Holdings at a wage rate of \$8.00 an hour and that she worked a total of 50.25 hours.

**FACTS**

The Determination reached the following conclusions under the heading Findings of Fact:

A copy of the Human Resources Development Canada advertisement bulletin shows that the Employer advertised for a cook, with 3 years minimum experience at \$8.00/plus depending on experience, per hour. This advertisement was

displayed the same day as the claimant went in and applied for work and commence employment, January 7, 2000.

A fax was sent to the Employer on February 9, 2000, outlining the complaint and the Employer responded by submitting their evidence accordingly.

A letter was sent to the Employer on February 16, 2000, explaining the above mentioned facts and the Employer was requested to respond to that letter by February 25, 2000.

The Employer failed to respond to the letter by February 25, 2000, but did respond on March 6, 2000. At this time the Employer stated that the claimant had been paid in full. The Employer states that the claimant applied for a front desk job but as there was none available, she took a job as a prep cook.

Later in the Determination, it notes:

Based on a balance of probabilities, the Investigating Officer prefers the evidence submitted by the claimant even though there is little difference between the hours of work paid by the Employer and those recorded by the claimant on her calendar, a difference of 4 hours. The four hours difference is the four hours claimed by the claimant for showing up for work, on January 15, 2000 and being sent home, by the Employer.

As well, the Investigating Officer was told by Roi, and accepted, that she had three years experience as a line cook, even though that experience was not included in the résumé she gave to the Employer. Roi confirmed the basis for that conclusion at the hearing. The evidence presented at the hearing of this appeal added nothing to the material that was given to and considered by the Investigating Officer.

## **ANALYSIS**

In *West Coast Home & Truss Ltd.*, BC EST #D264/00, the Tribunal made the following comment:

The Director has considerable latitude in deciding what information will be received and relied on when reaching a conclusion of fact in the context of an investigation. If West Coast is to successfully challenge that conclusion, the burden on them is to show either that the decision was manifestly unfair or that there was no rational basis upon which the conclusions of fact relevant to the decision could have been made (see *Mykonos Taverna operating as the Achillion Restaurant*, BC EST #D576/98). There is nothing in the appeal that even remotely suggests the conclusions made by the Director were either unfair or unreasonable.

That comment applies foursquare to this appeal. Trozzo Holdings has not done anything more than take issue that the Investigating Officer accepted certain information in preference to other

information. No evidence has been provided that shows those conclusions were either unfair or without rational basis. As such, they have not met their burden in this appeal and it is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated March 15, 2000 be confirmed in the amount of \$74.95, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**