

An appeal

- by -

Dawn Inskip
("Inskip")

- 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.: 2002/223

DATE OF DECISION: June 25, 2002

DECISION

OVERVIEW

This is an appeal filed by Dawn Inskip (“Inskip”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Ms. Inskip appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on April 3rd, 2002 (the “Determination”).

The Director’s delegate determined that Ms. Inskip was employed by Hundial Holdings Ltd., operating as the “Evergreen Pub” (the “Employer”), from February 6th to March 30th, 2001 when her employment was summarily terminated at the instance of the Employer. The delegate did not accept Ms. Inskip’s assertion that her employment commenced at some earlier point in time (prior to the opening of the Employer’s business, a new “pub” in Terrace, B.C.). In light of her brief service (less than 3 months), the delegate rejected her claim for compensation for length of service without having to address whether the Employer had “just cause” for termination. However, the delegate did award Ms. Inskip the sum of \$596.68 on account of unpaid wages (principally, overtime and vacation pay) and section 88 interest.

By way of a letter dated June 12th, 2002 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on their written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

THE PARTIES’ POSITIONS

Dawn Inskip

In a letter addressed to the Tribunal dated April 8th, 2002 (appended to her notice of appeal) Ms. Inskip says:

- the Employer offered her the position of “pub manager” for the yet to be opened pub during the latter part of November 2000;
- her employment actually commenced in early December 2000;
- her then current employment with a local restaurant ended in December 2000;
- in mid-December 2000 she was given a key to the premises and also the security codes;
- in early January 2001, the Employer gave her a \$500 “advance”;
- the pub, after several construction delays, actually opened for business on February 13th, 2001; and
- during the period from early December 2000 until her formal placement on the Employer’s payroll on February 6th, 2001, she was occupied with many duties on behalf of the Employer including: reviewing catalogues and ordering necessary supplies and equipment, researching (through site visits) other similar businesses in the local trading area, reviewing resumes submitted by potential employees and then conducting employment interviews, preparation of a “server’s manual”, drawing up floor plans, preparing a mission statement; conducting pre-opening tours of the pub and otherwise attempting to market the new business.

The above information is also contained in a second letter, dated April 23rd, 2001 addressed to the “Ministry of Labor” which is also appended to Ms. Inskip’s appeal form.

Ms. Inskip also tendered a letter dated April 26th, 2002 from her daughter attesting to the fact that Ms. Inskip had a premises key and security codes and was doing work for the pub on her home computer during December 2000 and that the Employer’s principal often attended their home to meet with Ms. Inskip. Her son also provided a brief letter dated April 26th, 2002 to like effect.

Ms. Inskip’s friend, Ms. Julia Brunelle, has submitted a letter to the Tribunal, dated April 24th, 2002, asserting that Ms. Inskip was working for the Employer during December 2000 and otherwise corroborating many of Ms. Inskip’s assertions set out above. Another friend, Ms. Laura Monette, wrote a letter dated April 18th, 2002 which also corroborates many of Ms. Inskip’s assertions as did Ms. Wanda Leslie (her letter is undated), the “general manager” of a local contracting firm.

Ms. Karen Carper, a co-worker at Ms. Inskip’s former employer (Denny’s Restaurant) also submitted a letter, dated April 24th, 2001 [sic, 2002?], which purports to corroborate Ms. Inskip’s position but, it should be noted, is almost entirely a hearsay document. Similar letters, consisting of largely hearsay statements, are also contained in letters from Ms. Inskip’s aunt (Shannon Vanderheide) and another friend (Sandra Low).

The Employer

Although the Employer was specifically asked (by way of a letter dated April 26th, 2002 from the Tribunal’s Vice-Chair) to file a submission with respect to Ms. Inskip’s appeal (to be submitted by May 21st, 2002), I have nothing before me from the Employer.

The Director’s delegate

The delegate’s submission, dated May 21st, 2002, consists of a one-page letter and several pages of attached documents. In his letter, the delegate--and quite properly in my view--acknowledges that Ms. Inskip appears to have a justifiable excuse for not submitting the various letters that are now before me to the delegate during his investigation. He suggests that he “would not object to the matter being referred back for further investigation”.

This is not a case where the appellant simply refused to have anything to do with the delegate and thus does not fall neatly within the *Kaiser Stables* principle. While the delegate’s investigation was ongoing, Ms. Inskip was trying to present and otherwise document her case in a complete manner but, admittedly, did not do so largely because of an unrelated personal family circumstance. The evidence that she has submitted, even though some of it is hearsay, nonetheless raises a very arguable case that her employment commenced well before February 6th, 2001. I note that her various factual assertions stand completely uncontradicted by the Employer.

In this case, and in the interests of ensuring a fair adjudicative process, I think it appropriate to refer this matter back to the delegate for further investigation.

ORDER

Pursuant to section 115(1)(b) of the *Act*, I order that this matter be referred back to the Director for further investigation.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal