

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.: 2000/271

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	No one appearing
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 20, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Trozzo Holdings had contravened Section 8 and Part 7, Section 58 of the *Act* in respect of the employment of Kenneth Johnson (“Johnson”) and ordered Trozzo Holdings to cease contravening and to comply with the *Act* and to pay an amount of \$168.48.

Trozzo Holdings says the Determination is wrong because Johnson did not deal with them “in good faith”; he was given a trial period of two days as a chef/cook, was unsuitable and was offered, and accepted a “demotion” to line cook at \$7.15 an hour; he owed money to Trozzo Holdings for room rental; and the Director’s calculation of his hours worked are wrong.

ISSUES TO BE DECIDED

The issue in this appeal is whether Trozzo Holdings has shown the Determination was wrong in respect of any of the matters set out the above paragraph.

FACTS

Johnson worked for Trozzo Holdings from January 13, 2000 until January 29, 2000 as a kitchen cook and was paid at a rate of \$7.15 an hour. Johnson claimed he was offered a position as chef/cook at a rate of \$8.00 an hour and accepted that position. Trozzo Holdings claimed Johnson had come from Golden, B.C. on a trial basis for the chef/cook position but was unable to handle that position. Instead, he was offered a position as line/cook at \$7.15 an hour. In respect of that claim, the Investigating Office stated in the Determination:

I prefer the evidence as submitted by the claimant over that submitted by the Employer for a number of reasons. I find it unreasonable that an Employer would pay someone \$8.00 per hour for two days of work and claim the person could not handle that position, was untidy and dirty. Yet the Employer keeps that person in their employ performing the same functions at \$7.15 per hour for a further two weeks, tolerating the dirtiness and untidiness for a lesser rate of pay?

In respect of the hours worked calculation, the Investigating Officer also chose to rely on the information supplied by Johnson, who had submitted a record of hours showing he had worked 80.5 hours. The Investigating Officer added 3 hours for January 18, 2000 to conform to minimum hours of work provisions in the *Act*. The Determination also notes that, while Trozzo Holdings had provided information during the investigation indicating Johnson had worked only 67 hours, they had given him a slip at the time of his termination showing he was being paid for 77 hours worked at \$7.15 an hour.

ANALYSIS

In *Trozzo Holdings Ltd.*, BC EST #D292/00, I noted the reference to the Tribunal's decision in *West Coast Home & Truss Ltd.*, BC EST #D264/00, and concluded:

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.

That comment also applies here and for the same reasons, I dismiss this appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 20, 2000 be confirmed in the amount of \$168.48, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal