

An appeal

- by -

John Benetos operating as Spanish Roof Tiles
(the "Employer")

- 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: Ib S. Petersen

FILE No.: 2002/199

DATE OF HEARING: June 21, 2002

DATE OF DECISION: July 10, 2002

DECISION

APPEARANCES:

Mr. John Benetos	on behalf of himself
Mr. Wanner Federico Morales	on behalf of himself

OVERVIEW

This is an appeal by Mr. Benetos, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on April 5, 2002. The Determination concluded that Mr. Morales was owed \$1,330.68 in wages and vacation pay by the Employer.

In a balanced, lengthy and carefully reasoned Determination, the Delegate concluded that Mr. Morales was owed \$1,330.68. She did not accept Mr. Morales claim with respect to his hourly rate, nor did she accept his evidence with respect to hours worked. Mr. Morales did not appeal her Determination. The Delegate based her conclusions on amounts paid and receipts offered by the Employer. She did not accept that three receipts indicating payment to Mr. Morales had, in fact, been paid to him. It is clear from the Determination that she did not accept that the signature on these receipts was not Mr. Morales’.

FACTS AND ANALYSIS

Mr. Benetos, the Employer, appeals the determination. As the Appellant, he has the burden to persuade me that the Determination is wrong. As it will be apparent from the reasons set out below, I am not persuaded that he has discharged that burden.

A hearing was convened at the Tribunal’s offices on June 21, 2002. At the hearing, both Mr. Benetos and Mr. Morales testified under oath or affirmation.

The sum total of Mr. Benetos’ case was that Mr. Morales had lied to the Delegate. He first denied that Mr. Morales had been an employee of his. When I asked why he had issued receipts in favour of Mr. Morales, he explained that Mr. Morales had, indeed, worked for him on a few jobs in the summer of 2001. He said that Mr. Morales had, indeed, signed the receipts in dispute in the appeal. His evidence was that Mr. Morales had told him “not to worry” when he pointed out to him that the signature appeared not to be his proper name. Mr. Morales evidence, not surprisingly, was to the contrary. He stated that Mr. Benetos was lying. Neither party cross examined much. In my view, Mr. Benetos has not met the burden on appeal.

In all of the circumstances, and the evidence before me, I am not persuaded that the Delegate’s conclusions are wrong--in fact, as noted above, her analysis of the evidence is both fair and evenhanded--and, therefore, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated April 5, 2002, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal