

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 -

Kutz 4 Kidz Hair Care Specialists Ltd.
("Kutz 4 Kidz")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Cindy J. Lombard

FILE No.: 2000/338

DATE OF HEARING: July 21, 2000

DATE OF DECISION: August 14, 2000

DECISION

APPEARANCES

The Appellant/employer, Kutz 4 Kidz Hair Care Specialists Ltd. (“Kutz 4 Kidz”) was represented by one of the Directors of Kutz 4 Kidz, Bernie Rennie (“Rennie”). The Respondent/employees, Treena Harris (“Harris”) and Cindy Reed (“Reed”), appeared on their own behalf. As well, a former employee of Kutz 4 Kidz, A. J. Whalen (“Whalen”), also gave evidence on behalf of the Respondent/employees. The Director did not appear.

OVERVIEW AND FACTS

This is an appeal by the employer, Kutz 4 Kidz, pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”) issued on April 19, 2000.

A) Treena Harris

Harris began working for the employer in the fall of 1998.

There is a dispute as to when her employment ended. Harris says that it ended on July 6, 1999, while Rennie says it ended several days earlier on May 26, 1999.

Harris was employed as a hairdresser for Kutz 4 Kidz at an hourly rate of \$7.15 per hour. Harris filed a complaint with the Employment Standards Branch claiming that she was due regular wages, vacation and statutory holiday pay for July 1.

Harris states that:

- a) she was employed during the period May 28, 1999, to July 6, 1999, during which period she worked 132 hours at \$7.15 per hour and was not paid for those services;
- b) she was not compensated for the July 1st, 1999, statutory holiday.
- c) she is due annual vacation pay for the 132 hours and the statutory holiday pay.

Rennie, for the employer, answers that Harris quit her employment on May 26, 1999, and therefore no monies are owing.

After investigating the complaint, the Director issued a determination on April 19, 2000, that the employer owed Harris the sum of \$1,038.50 being regular wages for hours worked during the period of May 28 to July 6, 1999, statutory holiday pay for July 1, 1999, as well as annual vacation pay on those sums and interest.

B) Cindy Reed

Reed was employed by the employer from March 20, 1999, until June 1, 1999.

Reed filed a complaint with the Employment Standards Branch claiming the following:

- a) that her pay cheque for the pay period of May 13 to May 26, 1999, in the amount of \$253.83 was returned NSF;
- b) she was due regular wages for pay period of May 27 to June 1, 1999;
- c) she was due annual vacation pay on the regular wages due for the period of May 27 to June 1, 1999.

On April 19, 2000, the Director issued a determination finding that the employer owed to Reed the sum of \$448.74 being the amount of the NSF cheque, wages due for the period May 27 to June 1, 1999, annual vacation pay and interest.

Rennie answers that on July 17, 2000, he forwarded a cheque in the amount of \$250.00 to Reed which Reed acknowledged that she received prior to the hearing and cashed. This sum represents all but \$3.83 plus interest accrued on the NSF cheque. Rennie continues to dispute that Reed was employed from May 26 to June 1, 1999.

ISSUES TO BE DECIDED

The issues raised on appeal in response to the determination are as follows:

- 1. With respect to Harris, was she employed during the period of May 28 to July 6, 1999, and therefore owed regular wages, statutory holiday time, vacation pay and interest as determined by Director.
- 2. With respect to Reed, was she employed during the period of May 26 to June 1, 1999, and therefore owed regular wages plus vacation pay and interest as determined by the Director.

ANALYSIS

Where the evidence Harris and Reed conflicts with that of Rennie, I prefer the evidence of Harris, Reed and the witness, A. J. Whalen, over that of Rennie. Harris, Reed and Whalen were credible, consistent witnesses.

A. Harris

Harris says that in fact, she continued to work for the employer until July 10, 1999, and gave verbal notice on July 12, 1999. On July 7, 8, 9 and 10 she says that worked on a commission basis only because Mr. Rennie and his wife told her that they could no longer afford to pay hourly.

In her claim with the Employment Standards Branch, Harris only claimed for the hourly wages owing up to July 6, 1999.

B. Reed

Reed says that her last day was June 1, 1999, and that she was asked to work eight hours that day because Harris was moving. Reed says that she gave two weeks' notice on May 17, 1999 that she would be leaving.

C. A. J. Whalen

Ms. Whalen states that she was first employed by the employer in June 1998 and fired without cause on March 20, 1999. Whalen states that she was let go not because she did not have excellent hairdressing skills, which Rennie states that she did have but that she was not good with the kids. The employer, Rennie and his wife, Sheila Rennie, asked Whalen to return to their employment on July 12, 1999, and Whalen did commence working for Kutz 4 Kidz again on July 13, 1999, and remained until August 28, 1999, when the salon closed its doors.

Whalen confirms Harris' evidence that she gave verbal notice that she was leaving that day. Whalen says that she was contacted by Sheila Rennie and asked whether she would return to work at the salon as Harris had quit without giving her notice. It is not so much what Sheila Rennie told her about Harris quitting as that is hearsay evidence but the fact that when Whalen arrived to commence her employment on July 13, 1999, she was the only employee-stylist and therefore implying that another stylist, ie. Harris had been employed up to that date.

Whalen states that upon beginning work, she noted that there were no pages for preceding days in the appointment book. When she questioned Rennie, he stated that he did not want Harris to have copies of the appointment pages and furthermore if Harris came in, that she should call the police.

Whalen further gave evidence with respect to the work schedule which was submitted by the employer for the month of June, 1999, that while that work schedule shows her initials as A.J. and employed during the month of June, that in fact, the record is false in that she was not employed by the employer in June, 1999. On this topic, Whalen stated that Sheila Rennie asked to have a meeting with her shortly after she left the employer's employment at the end of August, 1999. Whalen states that she had applied for Employment Insurance benefits and that that office had called Sheila Rennie to confirm Whalen's dates of employment. Whalen did meet with Sheila Rennie. Sheila Rennie stated that the fact that Whalen was reporting that she had worked in August, 1999, would cause she and her husband problems in that they had told Revenue Canada that they had closed their business at the end of July in order to reduce their tax liability. Whalen says that at the time she felt pressure to help Sheila Rennie from getting into trouble with Revenue Canada and therefore signed receipts that Sheila Rennie presented to her stating that she had worked in June and July, 1999, instead of July and August,

1999. Whalen states that she regrets helping the Rennie's lie to Revenue Canada and felt relieved to get it off her conscience.

The relevant sections of the *Act* are as follows:

Section 1 – Definitions:

“employee” includes

- (a) *a person, including a deceased person, receiving or entitled to wages for work performed for another,*
- (b) *a person an employer allows, directly or indirectly, to perform work normally performed by an employee...*

“regular wage” means

- (a) *if an employee is paid by the hour, the hourly wage... “statutory holiday” means... “Canada Day”*

Section 18 – *If employment is terminated:*

18 (1) An employer must pay all wages owing to an employee within 48 hours after the employer terminates the employment.

18 (2) An employer must pay all wages owing to an employee within 6 days after the employee terminates the employment.

Section 58 – *Vacation pay*

58 (1) *An employer must pay an employee the following amount of vacation pay:*

- (a) *after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the vacation pay;*
- (b) *after 5 consecutive years of employment, at least 6% of the employee's total wages during the year of employment entitling the employee to the vacation pay.*

(2) *Vacation pay must be paid to an employee*

- (a) *at least 7 days before the beginning of the employee's annual vacation, or*

- (b) *on the employee's schedule pay days, if agreed by the employer and the employee or by collective agreement.*
- (3) *Any vacation pay an employee is entitled to when the employment terminates must be paid to the employee at the time set by Section 18 for paying wages.*

The onus is on the employer to show that the Director's determination is incorrect. Taking into account the foregoing relevant provisions of the *Act* and the evidence, I have concluded that the employer has not satisfied that onus. The only adjustment that must be made is that the sum of \$250.00 should be deducted from the amount determined as owing to the Cindy Reed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the determination with respect to Harris be confirmed as issued in the amount of \$1,038.50 with whatever further interest that may have accrued pursuant to Section 88 of the *Act* since the date of its issue.

I further order that the determination with respect to Reed be varied to take in account the \$250.00 received by her just prior to the hearing date leaving a balance due and owing of \$198.74 together with whatever further interest that may have accrued pursuant to Section 88 of the *Act* since the date of its issue.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal