

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 -

Collectrite Services Kelowna Ltd.
("Collectrite" or "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 2000/293

DATE OF DECISION: August 8, 2000

DECISION

OVERVIEW

This is an appeal by Collectrite Services Kelowna Ltd. (“Collectrite” or “employer”) of a Determination, dated March 31, 2000, that relates to calculation of overtime pay and pay for training days. I dismissed this matter as a frivolous appeal as the employer failed to adduce any submission or evidence which questioned the findings of the Delegate with regard to overtime, or pay for training days.

ISSUE TO BE DECIDED

Did the Delegate err in the calculation of the overtime entitlement, by not taking into account the fact that Ms. Jaquish’s salary was based on a 50-hour workweek?

FACTS

This matter proceeds by way of written submissions.

Ms. Jaquish was employed as collection agent with the employer, Collectrite Services Kelowna Ltd, a debt collector service. Her rate of pay was \$1,500.00 her month. The Delegate made a demand for records with regard to Ms. Jaquish and the employer neglected or refused to provide the records which showed a record of the daily hours of work. Further the employer did not provide pay statements showing a record of the hours worked, as required by s. 27(1) of the Act. The Delegate determined the complaint on the basis of information provided, including the information provided by the employee. The Delegate was satisfied, on the basis of the information before him that Ms. Jaquish did work overtime, and was unpaid for the overtime. The Delegate was also satisfied that prior to her date of hire Ms. Jaquish worked 2 training days on March 20, 27, 1999, for 4 hours on each date. She was unpaid for this work. The Delegate found that Ms. Jaquish was entitled to the sum of \$335.35 plus interest of \$15.74.

It is not necessary for me to set out the calculations in detail. The employer’s very brief appeal submission does not respond to the facts found in the Determination,. The only grounds of appeal advanced are that the principal of the company requested a person other than the assigned Delegate investigate the matter, that he was told by the Delegate another person would be contacting him and that he received no contact from the person other than the assigned Delegate. This is apparently because the principal of the employer has an ongoing dispute with the Delegate.

ANALYSIS

In an appeal before the Tribunal, the burden is on the appellant to demonstrate an error such that I should vary or cancel the Determination. The appellant has alleged that he did not wish to deal

with the Director's Delegate assigned to the case. In my view a party cannot choose who will conduct the investigation, that is a matter solely for the Director. The appellant has failed to allege any errors that are responsive to the issues in this case. The appellant has not presented any evidence or argument challenging any of the findings concerning overtime or training pay. In *Re Rein*, BC EST #D561/97, the adjudicator referred to a frivolous appeal as one where no justiciable issue was raised, or where the proponent has presented no rational argument. This case is a frivolous appeal.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination of the Delegate made March 31, 2000.

Paul E. Love
Adjudicator
Employment Standards Tribunal