Employment Standards TRIBUNAL

An appeal

- by -

Gilbert Wilson, operating as TAS Contracting
("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: Kenneth Wm. Thornicroft

FILE No.: 2002/239

DATE OF DECISION: July 22, 2002

DECISION

OVERVIEW

This is an appeal filed by Gilbert Wilson operating as "TAS Contracting" (the "Employer") pursuant to section 112 of the *Employment Standards Act* (the "*Act*"). The Employer appeals a Determination that was issued by a delegate of the Director of Employment Standards (the "Director") on April 9th, 2002 (the "Determination") pursuant to which the Employer was ordered to pay its former employee, Nicholas Joseph ("Joseph), the sum of $1,175.18 on account of unpaid wages and section 88 interest.

By way of a letter dated July 5th, 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).

ISSUES ON APPEAL

The only submission I have from the Employer is a one-page letter (with attachments) dated May 1st, 2002 that was appended to the Employer's appeal form. In his May 1st letter, the Employer states, among other things (most of which are not relevant to this appeal; e.g., the assertions that the Employer is no longer operating and is devoid of funds), that Joseph was paid "contract wages" and that the Employer never spoke with Joseph, either in person or over the telephone, but rather only spoke to Joseph's father.

The Employer's appeal documents do not address either of the two issues that the delegate determined, namely, Joseph's wage rate and his hours of work. A letter attached to the appeal form, signed by the Employer's foreman, Roger Wilson, states that he thought all employees were hired at a rate of $10 per hour but that he did not personally hire Joseph. Thus, this letter has no evidentiary value with respect to the matter of Joseph's wage rate.

FINDINGS

I am not prepared to set aside the delegate's finding as to the number of hours worked given that there is no dispute about this matter and, further, given that the delegate calculated Joseph's entitlement based on the Employer's own payroll records (see Determination, page 3).

As for the wage rate, Joseph claimed that he was hired at a rate of $15 per hour but was only paid $10 per hour at the end of the job (which ran from May 28th to July 31st, 2001) because the Employer determined that the silviculture subcontract, for which Joseph was hired, was not sufficiently profitable. In his letter to the delegate, dated December 10th, 2001, the Employer conceded that Joseph was originally hired at an hourly rate of $15 ("the original wage rate was set at $15.00/hr").

The fact that the Employer lost money on the contract in question is not relevant to the matter of Joseph's wage rate. Joseph was contracted at a $15 per hour wage rate and thus he was entitled to be paid for all hours worked based on that wage rate. The Employer did not have the unilateral right to reduce Joseph's wage rate when the underlying silviculture contract proved to be unprofitable for the Employer.

Accordingly, this appeal is devoid of merit and must be dismissed.

ORDER

Pursuant to subsections 114(1)(c) and 115(1)(a) of the *Act*, I order that the this appeal be dismissed and that the Determination be confirmed as issued in the amount of $1,175.18 together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal