

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 -

Chester Patrick Siah operating as Siah Silviculture Company
(" Siah ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/229

DATE OF HEARING: August 2, 2000

DATE OF DECISION: August 18, 2000

DECISION

APPEARANCES:

for the Appellant	Chester Patrick Siah
for the individual	in person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Chester Patrick Siah operating as Siah Silviculture Company (“Siah”) of a Determination which was issued on February 28, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Siah had contravened several provisions of the Act, including Sections 17, 18, 35, 36, 40, 56 and Part 5, in respect of the employment of Wendy Cardinal (“Cardinal”) and ordered Siah to cease contravening and to comply with the Act and to pay an amount of \$9,687.70.

Siah says the hours of work calculation done by the Director is wrong. The appeal also contains several other areas where the Determination was alleged to be wrong, including whether Cardinal did much map or compass work, whether she held a Level I or III first aid certificate and whether she did much bookkeeping work for Siah.

ISSUES TO BE DECIDED

The issue is whether Siah has shown the Determination is wrong in any way.

FACTS

Siah operated a silviculture company whose main functions were brush and weed work (tree brushing/spacing). The Determination addressed a claim for unpaid wages by Cardinal. The Determination contained the following, under the heading Findings of Fact:

There is no dispute about the following issues:

- that the Complainant was employed by the Employer at least from June 8, 1998 to September 8, 1998;
- that the rate of pay was \$15.00 an hour;
- that the Complainant worked in various capacities among which were recruiting/training employees, preparing and bidding for contracts, timber cruising, mapping, first aid, transporting the crew, bookkeeping and other administrative functions.

- the accuracy of the daily hours of work submitted by the Complainant;
- the amount of money (\$1216.80) paid to the Complainant.

The Determination noted that notwithstanding Cardinal had worked for Siah for a period from June 5, 1997 to September 8, 1998, she had voluntarily limited her wage claim to a 36 day period from August 1, 1998 to September 8, 1998. Cardinal had provided the Director with a record of daily hours worked during the period and, as noted above, there was no objection to or disagreement with that record. Siah had not kept any record of hours worked by Cardinal.

ANALYSIS

The burden of showing there is some error in the Determination that justifies its variance or cancellation belongs to an appellant, in this case, Siah, see *World Project Management Inc. and others*, BC EST #D134/97 (Reconsideration of BC EST #D325/96).

Even though the Determination indicated Siah did not object or disagree with the record of daily hours of work submitted by Cardinal during the investigation, the main ground of appeal is that the record of hours submitted by Cardinal and, by extension, the hours of work calculation in the Determination, was wrong. The appeal suggests the error in Cardinal's record could be verified by reference to work records and reports kept by two foremen who had worked for Siah during the period of the claim. Siah also alleged that Cardinal had been attending courses at New Caledonia College during times she claimed to be working. Finally, and once again notwithstanding the apparent absence of any dispute on this point by Siah during the investigation, the appeal suggests that Cardinal did not work in the various capacities listed in the Determination, the inference being that she did not do as much "work" as she claimed.

Siah produced no evidence at the hearing that addressed any of these points of appeal. None of the persons that Siah claimed could verify the error in the hours of work record provided by Cardinal were called to give evidence and, even in his own testimony, none of the conclusions made in the Determination were seriously challenged.

This appeal has amounted to little more than a token effort by Siah to get a different result than what is found in the Determination without providing any reason for doing so. In *Chilcotin Holidays Ltd.*, BC EST #D139/00, the Tribunal stated:

The purpose of an appeal is not simply to allow an aggrieved party a second chance to argue the same case that was argued unsuccessfully to the Director during the investigation. A party appealing a Determination must show it is wrong, in fact or in law. In the context of an appeal based on an alleged error on the facts or the conclusion to be drawn from the facts, a party saying, in effect: "I don't disagree that these are the facts and that the Director had all these facts, but I disagree with the result", will not be successful. The Tribunal is not a forum for second guessing the work of the Director.

Siah has failed to meet the burden on him. There is nothing to show the Determination is wrong and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated February 28, 2000 be confirmed in the amount of \$9,687.70, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal