

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-

Ovidiu Ruicea operating as Ovidiu Contracting
("Ovidiu")

of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

File No: 98/372

DATE OF HEARING: August 14, 1998

DATE OF DECISION: August 19, 1998

DECISION

APPEARANCES

Mathieu Malenfant on his *own* behalf

OVERVIEW

This is an appeal by Ovidiu Ruicea operating as Ovidiu Contracting ("Ovidiu") under Section 112 of the *Employment Standards Act* (the "*Act* "), against a Determination dated May 21, 1998 issued by a delegate of the Director of Employment Standards (the "Director"). Ovidiu alleges that the delegate of the Director erred in the Determination by concluding that Mathieu Malenfant ("Malenfant") was owed wages in the amount of \$700.00 plus interest of \$22.51 for a total of \$722.51.

The appellant Ovidiu did not appear at the hearing therefore, pursuant to Tribunal policy, after waiting 15 minutes the hearing was adjourned. The matter will therefore be considered based on the material on the file.

ISSUE TO BE DECIDED

The issue to be decided in this matter is whether Ovidiu owes wages to Malenfant?

FACTS

Malenfant states that:

- he worked for Ovidiu as a tree spacer from October 25, 1997 to October 28, 1997 inclusive;
- he performed and completed work on 3.5 hectares;
he was advised that the rate of pay was to be \$200 per hectare;
- he was advised that the hours of work each day would be 10;
he kept a daily journal which tracked the hours worked, hectares worked and pay per hectare;
- he left after his work was completed and provided Ovidiu with a forwarding address for his wages and Record of Employment ("ROE");
when he later contacted Ovidiu in regard to his ROE and wages, Ovidiu advised that he was not owed wages as his workmanship was poor;
- he was not told by Ovidiu or any foreman that his work was not acceptable prior to completing the work;
- he had been performing tree spacing work for the past seven years.

Ovidiu advised the delegate on February 25, 1998 that:

- the work performed by Malenfant was not acceptable and that Malenfant should pay Ovidiu as Ovidiu had to pay other workers to re-do the same hectares; Malenfant only completed work on 1.5 hectares not 3.5 hectares.

At a later date, Ovidiu advised the delegate that:

- Malenfant did not work 10 hours per day for 4 days but rather only worked for 2 days at 5 hours and 5.5 hours respectively; he denied previously advising the delegate that Malenfant had worked on 1.5 hectares;
- Malenfant worked on November 1 and November 3, 1997; he did not keep any records for Malenfant as the period of employment was so short; 2 co-workers submitted letters supporting Ovidiu's claim that Malenfant only worked for 2 days and less than 8 hours on those days.

The delegate investigated Malenfant's allegations and concluded that the information provided by Ovidiu "lacked consistency" in regard to the dates worked, the hours worked each day and the number of hectares completed. With regard to the dates worked, when the delegate provided information to Ovidiu that Malenfant could not have worked on November 1 & 3, 1997, Ovidiu then stated that the 2 days worked must have been October 25 & 27, 1997. With regard to the hours worked, during the initial conversation with the delegate on February 25, 1998 Ovidiu did not dispute the 4 ten hour days worked but did dispute the 3.5 hectares claimed to be completed alleging that, in fact, Malenfant only did 1.5 hectares, a figure which Ovidiu later disputes.

Ovidiu further alleges in his appeal that records in regard to Malenfant were with his accountant in Prince George however, when the accountant was contacted by the delegate, the accountant advised the delegate that Ovidiu "doesn't probably keep records of hours of work". Ovidiu later provided a summary or outline of hours to the delegate.

ANALYSIS

The burden of establishing that the delegate of the Director erred in the Determination rests with the appellant, Ovidiu.

Ovidiu did not keep or provide payroll records to the delegate when requested to do so. The summary later provided are not payroll records as required to be kept pursuant to the provisions of Section 28 (1) of the *Act*. The cheque provided by Ovidiu, allegedly for the work performed by Malenfant, is dated March 16, 1998, almost 5 months after the work was performed. Ovidiu has not provided any records (maps, plot sites, diagrams, etc.) which indicate the area worked by Malenfant.

Ovidiu chose to not appear at the appeal hearing to provide further evidence for consideration in this appeal.

Malenfant did keep a daily journal of the hours worked, hectares worked and the rate of pay.

In the absence of credible records from Ovidiu, I am satisfied that the records kept daily by Malenfant accurately reflect the hours worked, the hectares completed and the rate of pay.

Based on the above and on the balance of probabilities, I conclude that Ovidiu has not established that the delegate erred in the Determination. I further conclude that the amount of wages owing to Malenfant as calculated by the delegate and set forth in the Determination are correct in all respects.

The appeal by Ovidiu is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 21, 1998 be confirmed in the amount of **\$722.51** together with whatever further interest may have accrued, pursuant to Section 88 of the *Act*, since the date of the issuance.

Hans Suhr
Adjudicator
Employment Standards Tribunal