

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-

Manoj Singh
(the Employer)

- of a Determination issued by-

The Director of Employment Standards
(the Director)

ADJUDICATOR: Hugh R. Jamieson

FILE NO: 1999/251

DATE OF HEARING: August 25, 1999

DATE OF DECISION: September 2, 1999

DECISION

APPEARANCES

Mr. Manoj Singh

Ms. Pushpa Ram
Ms. Ashita Kumar

OVERVIEW

This appeal dated April 28, 1999, is brought by the Employer against a Determination issued by the Director on April 6, 1999, wherein it was found that the Employer owed Ms. Pushpa Ram (the Employee) the amount of \$533.70 being wages and vacation wages due, with interest. The basis for the appeal is the Employer's contention that the Employee had already been paid all wages due and that the Director had therefore erred.

ISSUES TO BE DECIDED

The sole issue here is whether the Director erred in finding that the wages and vacation wages are owing.

FACTS

The Employee worked for the Employer as a nanny from June 17, 1996, to July 8, 1996, at a promised wage rate of \$7.50 per hour. After a trial period of two weeks she then lived in for the third week of her employment. The Employee claims that she was not paid any wages at all for these three weeks of work. According to the Employer, she was paid a total of \$450.00. The first \$200.00 during the first two weeks of her employment by cash payment in front of a witness, another employee, Ms. Kamlamma Menon. The other \$250.00 when her employment terminated on July 8, 1996, by way of a cheque that was taken and cashed by the Employee's brother, Mr. Harry Dutt and the money handed over to the Employee.

When the Determination was issued in April 1999, the Director had possession of letters provided by the Employer, which were purportedly written by Ms. Menon and Mr. Dutt supporting the Employer's claims.

It should also be mentioned that the reason for the extremely lengthy delay in the issuance of the Determination is that the matter was suspended by the agreement of both parties pending the outcome of related proceedings in the B.C. Supreme Court. These proceedings apparently ended with a ruling that the dispute between these parties was properly one to be dealt with by the Tribunal.

THE HEARING

The onus here is of course on the Employer to convince the Tribunal that the Director somehow erred in finding that the Employee had not been paid any wages for the three weeks work she put in as a nanny back in 1996. To accomplish this, it would be expected that the Employer would have called Mr. Harry Dutt as a witness at the hearing to verify that he had indeed cashed the cheque that was supposed to be issued for \$250.00 on July 8, 1996, and that the money was given to the Employee. The Employer could also have called Ms. Kamlamma Menon to witness the purported earlier payment of \$200.00 cash to the Employee. These are obviously the crucial areas in the Employer's case where credibility could be a determining factor. However, the Employer called neither of these people. He simply appeared and repeated the same account of the events and relied on the same letters purportedly written by these people that the Director had obviously rejected. When asked to produce the cheque in question, the Employer assured me that there was such a cheque and that Mr. Dutt's signature and I.D. were on it. However, the Employer did not have it with him and explained that it was a company cheque and that it was somewhere at home. All of this notwithstanding, the Employer was adamant that the Employee had been paid the \$450.00 for the work she had done.

An interpreter assisted the Employee at the hearing, where she faced a line of questioning which the Employer insisted would expose the lies he claimed she had been telling throughout this whole process. As it turned out though, the Employee turned out to be a very stubborn witness. She never waived to the end, maintaining that she never received any wages for the three weeks work that she had put in for the Employer in 1996. Incredulous as it may sound, the Employee also insisted that she had never spoken once to her brother Mr. Harry Dutt, since the events in the of summer of 1996, about the Employer's allegations that he had cashed her pay cheque and was supposed to have given her the money.

ANALYSIS

In light of the intransigence of both parties in their version of the circumstances surrounding this dispute, it appears that the approach taken by the Director to decide this matter is the only rational way to break the credibility deadlock and to ensure that the purposes of the Act are achieved. As the Director pointed out in the Determination under review, it was the responsibility of the Employer under Section 27 (1) of the Act to provide a written wage statement every payday to the Employee, setting out things such as her rate of pay, hours worked, gross pay, deductions, net pay and so on. In the given circumstances, where the Employer has failed to comply with this statutory obligation and, being unable to provide evidence to the contrary, it must be taken that the wages were not paid.

ORDER

Pursuant to Section 115 of the Act, the Determination dated April 6, 1999, is hereby confirmed.

Hugh R. Jamieson
Adjudicator
Employment Standards Tribunal