

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 -

Felka Drywall Ltd.
("Felka")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 97/178

DATE OF DECISION: August 15, 1997

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Felka Drywall Ltd. (“Felka”) from a Determination of a delegate of the Director of Employment Standards (the “Director”) dated February 26, 1997 ordering Felka to pay an amount of \$5,355.28 in respect of the employment of Stephen S. May (“May”).

Felka had paid May as an apprentice although he was never registered as an apprentice under the *Apprenticeship Act* nor was there any written apprenticeship agreement between or involving May and Felka. The Determination concluded Felka had contravened the wage and benefit requirements of the *Skill Development and Fair Wage Act* (the “SDFWA”) in respect of the employment of May. Felka says the Determination is wrong because, it contends, an apprenticeship agreement can be verbal and need not be registered in order to meet the requirements of SDFWA. As an alternative, Felka says the responsibility for ensuring May was properly registered was on him and he should not profit, nor should Felka be penalized, by his failure to meet that obligation.

ISSUES TO BE DECIDED

There are two issues raised. The first is whether an apprenticeship agreement must be registered under the *Apprenticeship Act* before the apprenticeship rates in the SDFWA apply to the employment of an individual working on a construction project to which the SDFWA applies. The second relates to who has the obligation to register the agreement with the Apprenticeship Branch.

I have concluded this issue, in the circumstances of this case, can be decided without a hearing.

FACTS

The facts are not seriously in dispute:

1. May was employed by Felka on fair wage construction site from March 5, 1996 to July 5, 1996.
2. At the invitation of Felka, May agreed to become an apprentice. May and Felka signed an Application to Register an Apprentice. The document was either never submitted to the Apprenticeship Branch for processing or was stopped by Felka before it could be processed. In

either case no apprenticeship agreement was ever completed or registered with the Apprenticeship Branch.

3. May was paid Wall and Ceiling Installer apprentice rate on the project. Wall and Ceiling Installer is a designated trade under the *Apprenticeship Act*.
4. The Director concluded May should not have been paid at an apprenticeship rate, but should have received labourer's rate, \$19.90 an hour, and benefits, \$4.00 an hour, for his work on the project because the apprenticeship agreement was not registered.

ANALYSIS

The tribunal has considered the question of whether, to meet the requirements of the *SDFWA*, an apprenticeship agreement could be verbal, on a number of occasions. It is now settled that while apprenticeship agreements may be written or verbal, a person employed in what is identified as a designated trade in the *Apprenticeship Act* will not be considered to be an apprentice for the purposes of the *SDFWA* unless that person is registered under the *Apprenticeship Act*. Adjudicator Thornicroft reached that conclusion in *Tana L. Gilberstad*, BC EST #D129/97, April 11, 1997:

... Section 4(1) of the *SDFWA* requires that all "apprentices" working at a "fair wage" site must either be registered under the *Apprenticeship Act* or hold a valid B. C. certificate of apprenticeship. The only exception permitted is where the apprenticeship in question is not recognized by the *Apprenticeship Act*.

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The implication for apprenticeship agreements for persons working in the designated trades on construction projects to which the *SDFWA* applies is that those agreements will, in all likelihood, have to be in writing. In the circumstances of this case, a verbal agreement would not satisfy the requirements of the *SDFWA* because it relates to a designated trade and it has not been registered under the *Apprenticeship Act*.

Mr. Thornicroft also confirmed, stating his agreement with other adjudicators, that it is the employer's obligation to ensure the apprentice is properly registered or otherwise certified if it seeks to apply the apprentice wage schedule to that person.

On the basis of the above conclusions, the appeal of Felka is dismissed.

ORDER

Pursuant to Section 115 of the *Act* the Determination of the Director dated February 26, 1997 is confirmed.

David Stevenson
Adjudicator
Employment Standards Tribunal