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 -

Anne Shek ("Shek")

- of a Determination issued by -

The Director Of Employment Standards (the "Director")

ADJUDICATOR: Hans Suhr

FILE No.: 97/215

DATE OF HEARING: August 27, 1997

DATE OF DECISION: September 5, 1997

DECISION

APPEARANCES

Allan Grandy

on behalf of Strataco Management Ltd.

OVERVIEW

This is an appeal by Anne Shek ("Shek"), under Section 112 of the *Employment Standards Act* (the "Act"), against a Determination dated March 12, 1997 issued by a delegate of the Director of Employment Standards (the "Director"). .The delegate of the Director determined that Shek was not owed wages by Strataco Management Ltd. ("Strataco"). Shek alleges that the delegate of the Director erred in the Determination.

Shek provided a letter from her Doctor dated August 20, 1997 which indicated that she "would not be fit to attend the scheduled hearing". Subsequently Shek was contacted by the Tribunal to arrange for Shek to participate via telephone conference call. Shek stated that she did not want to participate in the hearing in any manner, she had submitted all the information that was necessary and finally, the Tribunal should make their decision based on the information already provided.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Shek is owed wages?

FACTS

The following facts are not in dispute:

- Shek and her spouse were employed by Strataco as caretakers of the residential complex, Strata Plan NW939 River Springs, from July 1, 1993 to December 13, 1996;
- the total remuneration for this position was \$2,700.00 per month which was paid as \$1,350.00 to Shek and \$1,350.00 to her spouse;
- Shek's spouse was injured on the job and was in receipt of Worker's Compensation Board ("WCB") wage loss benefits for the period October 30 to November 24, 1996;
- Shek's spouse did not receive any remuneration from Strataco during the period he received WCB wage loss benefits

Shek states that:

- she was required to perform additional duties during the period that her spouse was injured;
- she did not receive any additional remuneration for these additional duties:
- it is not possible to complete the duties set out in Strataco's job description during an 8 hour work period.

Strataco states that:

- Shek and her spouse were employed as a couple, and the duties set out on the job description could be performed with each partner not being required to work in excess of 8 hours per day;
- Shek and her spouse had the flexibility to arrange their work load to accommodate an 8 hour shift for each;
- Shek was advised at the time of her spouse's injury to only perform the duties that she normally performed;
- Shek was further advised that if she needed help, the relief caretaker, Rod Campbell ("Campbell") would be available;
- as the relief caretaker, Campbell normally worked on the weekends or when the Shek's were not available;
- Campbell worked 4 hours on each of November 18, 20 and 21, 1996 to perform duties normally performed by Shek's spouse.

ANALYSIS

The burden of establishing that 'additional' work was performed rests with Shek. In order for Shek's appeal to succeed, she must establish that extra hours were in fact worked and no remuneration was received for those 'extra' hours.

Shek provided "Caretaker Reports" which covered the period in question, however, those reports do not indicate the actual start or end times of work each day. Those reports indicate the time when the gates were opened in the morning and also indicate when lock up was completed. Those records do not however indicate the actual hours worked on each day.

In the absence of specific records which indicate the actual hours worked each day, I am not prepared to speculate as to how long Shek might have worked each day to complete the duties as described in the "Caretaker Reports" submitted.

For all of the above reasons, I conclude that Shek is **not** owed wages from Strataco.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated March 12, 1997 be confirmed in all respects.

Hans Suhr Adjudicator Employment Standards Tribunal

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