

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

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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