

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 -

Douglas Smith operating Coastal Canada Consulting Services
("Coastal")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE No.: 97/566

DATE OF DECISION: September 17, 1997

DECISION

OVERVIEW

This is an appeal by Douglas Smith operating Coastal Canada Consulting Services (“Coastal”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated July 4, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Coastal alleges that the delegate of the Director erred in the Determination by concluding that Angie K. Murray (“Murray”) was an employee and further erred by concluding that Coastal owed wages and vacation pay to Murray. The Director’s delegate concluded that Coastal had contravened Sections 17 and 58 of the *Act* and owed \$806.00 plus interest for a total of \$817.64.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. Was Murray an employee of Coastal ?
2. Does Coastal owe wages and vacation pay to Murray ?

FACTS

The following facts are not in dispute;

- Coastal states that Murray was “brought on board as temp help for the period February 25, 1997 to March 31, 1997 and if things worked out we would consider full time employment.”;
- Murray was not paid vacation pay;
- Coastal issued a cheque dated March 14, 1997 in the amount of \$775.00 to Murray and noted that this cheque was “pay for March 1-15, 1997”;
- Coastal issued a “stop payment” on the cheque dated March 14, 1997;

Coastal states that:

- Murray was a “contract person” and not an employee;
- Coastal “cancelled” Murray’s cheque because Murray did not return keys;
- Murray did not work on March 13 or 14;
- Murray is not owed the sum of \$775.00 as she did not fulfill the terms of her contract with Coastal.

ANALYSIS

The Act defines an **employee** as :

"employee" includes

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,*
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,*
- (c) a person being trained by an employer for the employer's business,*
- (d) a person on leave from an employer, and*
- (e) a person who has a right of recall;*

Coastal has acknowledged in their submission that “Murray was brought on board as temp help for the period February 25, 1997 to March 31, 1997 and if things worked out we then would consider full time employment”. The *Act* does not provide for differing classes of employees, a person is either an employee under the provisions of the *Act* or not.

I am satisfied that, upon considering the submission of Coastal and the other information provided and pursuant to the provisions of the *Act*, Murray was an employee of Coastal.

With respect to the issue of wages owing, Coastal has not denied that wages were owing to Murray, they have merely taken the position that Murray is not entitled to be paid as Murray did not fulfill her obligations to Coastal.

The amount of the wages owing \$775.00 is also not disputed by Coastal as that was the amount of the cheque first issued and then stopped.

Coastal did not provide any evidence to support the allegations that Murray did not work on March 13 or 14, 1997.

An employee such as Murray was, is entitled pursuant to the provisions of Section 58 of the *Act*, to be paid vacation pay on wages earned after completion of 5 days of employment. There is no dispute that Murray worked in excess of 5 days, therefore Murray is owed vacation pay.

I conclude that Murray is owed wages and vacation pay.

The calculation of wages and vacation pay owing set forth in the Determination contains an error. I have therefore calculated the amounts owing as follows:

Wages	\$775.00
4% Vacation Pay	<u>\$ 31.00</u>
Total	\$806.00

For all of the above reasons, the appeal by Coastal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 4, 1997 be varied to be in the amount of **\$806.00** together with interest calculated pursuant to Section 88 of the *Act*.

Hans Suhr
Adjudicator
Employment Standards Tribunal