

An appeal

- by -

Darlene F. Grey operating as Roadrunner Courier

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: John M. Orr

FILE No.: 2002/373

DATE OF DECISION: September 19, 2002

DECISION

OVERVIEW

This is an appeal by Darlene F. Grey (“Grey”) operating as Roadrunner Courier pursuant to Section 112 of the Employment Standards Act (the “*Act*”) from a Determination dated May 10, 2002 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

Grey employed Beverly C. Howard (“Howard”) as a courier paid on a commission basis from July 10 to September 11, 2001. Howard quit her employment but made a claim for unpaid wages. The Director determined that Howard was owed \$1537.07 in unpaid commissions. Grey has appealed claiming that Howard was an independent operator and not an employee.

ISSUES

The only issue raised in this case is whether Howard was an employee or an independent contractor.

FACTS AND ANALYSIS

The amount of commissions owing to Ms. Howard is not in dispute as those amounts were provided by the employer’s bookkeeping service. Grey suggests that there should be no vacation pay because Howard was not an employee.

The only evidence provided by Grey to establish that Howard was an independent operator is a letter to the Tribunal in which she states that Howard “... was responsible for her own expenses”. Ms Grey goes on to acknowledge that money was owed to Howard and that Howard had agreed that the money would be paid in small amounts until paid in full.

The onus on an appeal is on the appellant, Ms. Grey, to establish that the Determination was in error. In this case Ms. Grey has presented no substantial evidence to establish that Howard was working as an independent operator. It seems apparent that this appeal was simply filed as a delaying process to further avoid or delay payment of money justly owing to Ms. Howard.

ORDER

I order, under section 115 of the *Act*, that the Determination dated June 11, 2002 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal