

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 -

Gary Rawcliffe
("Rawcliffe")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/608

DATE OF DECISION: September 11, 1997

DECISION

OVERVIEW

This is an appeal by Gary Rawcliffe (“Rawcliffe”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated August 1, 1997 which was issued by a delegate of the Director of Employment Standards (the “Director”). Rawcliffe alleges that the delegate of the Director erred in the Determination by concluding that wages owing to Rawcliffe were to be calculated at the rate of \$7.00 per hour. The delegate of the Director determined that Shawn Patrick Downy (“Downy”) owed wages in the amount of \$1,908.42 to three former employees, Rawcliffe (\$799.16); Gilbert Lefebvre (“Lefebvre”) (\$589.74) and Mary Stanley (“Stanley”) (\$519.52). Neither Lefebvre nor Stanley have appealed the Determination.

Rawcliffe further alleges that he was terminated without cause and is therefore entitled to receive compensation for length of service.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Downy owes any further wages or compensation for length of service to Rawcliffe ?

FACTS

Downy employed Rawcliffe, Lefebvre and Stanley to perform janitorial services at various locations which Downy had contracted with Bee-Clean Building Maintenance Inc. Downy acknowledges that wages were owed to the former employees.

Lefebvre and Stanley have not appealed the Determination of the delegate of the Director.

Rawcliffe states that the wages owing were calculated incorrectly and do not take into account work performed earlier for Downy nor does the calculation reflect the agreement with Downy to be paid \$9.00 per hour. Rawcliffe further states that he was terminated without cause and is therefore entitled to be paid compensation for length of service.

ANALYSIS

The burden of establishing that the delegate of the Director erred in the Determination rests with Rawcliffe.

Rawcliffe has not provided any evidence to substantiate his allegations that his hourly rate was \$9.00 or that he was not paid for all the hours worked.

With respect to the allegation of Rawcliffe that he was terminated without cause and is therefore entitled to compensation for length of service, I conclude that as neither the original complaint filed by Rawcliffe or the Determination being appealed mentioned any issues with respect to termination of employment, I am not prepared to consider those issues. It would not be appropriate for me to consider issues which had not previously been raised in the matter under appeal.

I conclude that Rawcliffe has not met the burden of establishing that he is entitled to further wages or compensation for length of service.

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

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated August 1, 1997 be confirmed in all respects for the amount of **\$1,908.42**.

Hans Suhr
Adjudicator
Employment Standards Tribunal