

An appeal

- by -

Kathie L. B. Fields
(the "Appellant")

- 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: Ib S. Petersen

FILE No.: 2002/352

DATE OF HEARING: September 18, 2002

DATE OF DECISION: September 25, 2002

DECISION

APPEARANCES:

Ms. Kartherine Fields	on behalf of herself
Mr. Robert Plovnikoff	on behalf of the Respondent, Festival Foods Ltd.

FACTS AND ANALYSIS

This is an appeal by Ms. Fields, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on June 3, 2002. The Determination concluded that Ms. Fields was owed \$00.00 from the Respondent.

The background is as follows. The Respondent operates a mobile food concession business at various festivals around the province. The Delegate concluded that Ms. Fields, who claimed to have worked for the Respondent for four days on festivals in Mission and Vancouver in July 2001, could not substantiate the hours she claimed to have worked. She was given a cheque for \$120 for “wages.” Following interviews with witnesses, the Delegate concluded that she was paid for all hours worked.

As mentioned Ms. Fields appeals the determination. As the Appellant, she has the burden to persuade me that the Determination is wrong. I am not persuaded that she has discharged that burden.

Ms. Fields testified that she was hired to work by her son, who was also employed by the Respondent. She agrees that Mr. Polovnikoff did not hire her and that there was no agreement on wages. The Respondent says that she attended the festivals and was “partying” with her son. The Respondent says she was never hired to work. According to the Determination, however, Mr. Polovnikoff’s father, who also worked for the Respondent, told the Delegate that Ms. Fields “was hanging around ... and kept on stating that she could do things so he had her cut some onions.”

On the balance of probability, therefore, I find that the Delegate concluded--correctly--that Ms. Fields did some work for the Respondent. The cheque, made out to her, in the amount of \$120 supports that conclusion. The Respondent advanced different, conflicting rationales for the cheque: one being that the son had Mr. Polovnikoff Sr. sign the cheque under false pretenses and, the other, that the son had him write the cheque for the mother “to get her out of there.” Mr. Polovnikoff Sr. told the Delegate that he gave her the cheque to cover “some work” and because her boyfriend had helped him. There are, in my view, serious credibility problems in the Respondent’s case on this point.

On the other hand, I am not persuaded by Ms. Fields. There is nothing before me, other than her testimony, to support that she worked the hours claimed. Having observed her testify, I am of the view that she is not credible and exaggerates her claim, between 11 and 15 hours on three days on one festival. The Delegate, based on witness interviews to the effect that she worked little or no time, found her claim to be exaggerated and I am not prepared to disturb that finding. Ms. Fields claimed to have photographs to prove that she worked for the Respondent. These were not in evidence at the hearing, despite being expressly mentioned in the appeal. As well, there are likely witnesses to the amount of hours worked, namely her two sons, who worked for the Respondent, and her boyfriend, who also did some work, when

one son was “incapacitated” for various reasons that I need not go into. There is no evidence from these persons.

In all of the circumstances, and the evidence before me, I am not persuaded that the Delegate’s erred in his conclusions and, therefore, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated June 3, 2002, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal