



An appeal

- by -

The Pacific Investment Corporation Limited operating as Peaks Coffee House
(the "Employer")

- 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.: 2001/419

DATE OF HEARING: August 22, 2001

DATE OF DECISION: August 23, 2001

“partner” in the business, told her not to record hours in excess of 40 in a week and that on the one occasion where she did, she was not paid for those hours. Wolverton’s wife did not testify at the hearing and Westwell’s testimony, therefore, stands uncontradicted. Westwell explained that she was only 17 years old when she started working for the Employer, was living away from home, and that she was concerned that she might not have a job if she claimed the hours actually worked. In my view, this raises serious questions about the records the Employer seeks to rely on.

I understand from the determination and evidence presented at the hearing, that the Delegate in his assessment of the hours worked by Westwell considered the opening hours of the coffee house, the schedules of other staff, and Westwell’s explanation. While I agree that the Delegate ought to consider records submitted by the parties, such as the time sheets, in this case, it does not follow that he must accept them as true reflections of the work done. The records must be considered in light of the surrounding circumstances. In the circumstances of this case, I agree with the Delegate’s conclusions. I do not accept that the “estimate” is arbitrary as suggested by the Employer.

At the hearing, Westwell indicated her agreement with the Delegate’s estimate as a true reflection of her hours worked. While the Employer suggested that the time sheets properly reflected, they were not in evidence at the hearing, or part of the file. The Employer could not, in the result, point me to specific errors in the Delegate’s calculations. The Employer conceded that, while the original time sheets were provided to the Delegate, it likely had copies of the documents. I do not accept, therefore, that the documents were not available to the Employer. In note in that regard, the Tribunal’s “Appeal Form” specifically reflect the requirement that any document that supports a party’s appeal must be included.

In short, I am not persuaded that the delegate erred in his conclusions. The Employer has not discharged the burden on the appeal and it is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated March 8, 2001, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal