

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-

H.B. Kaysons Ltd.
operating as Guru Lucky Sweets

(“Guru Lucky Sweets” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 97/417

DATE OF HEARING: September 15th, 1997

DATE OF DECISION: November 7, 1997

DECISION

APPEARANCES

Jeetendra Patel for H.B. Kaysons Ltd. operating as “Guru Lucky Sweets”
No appearance on behalf of Surjit Sandhu
No appearance on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal brought by Kantilal Patel on behalf of H.B. Kaysons Ltd. operating as “Guru Lucky Sweets” (“Guru Lucky Sweets” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on May 1st, 1997 under file number 198566 (the “Determination”).

The Director determined that Guru Lucky Sweets owed its former employee, Surjit Sandhu (“Sandhu”) the sum of \$691.61 on account of unpaid wages earned during the period April 17th to 27th, 1996.

The appeal was heard at the Tribunal’s offices on September 15th, 1997 at which time I heard evidence and submissions from Jeetendra Patel, Sheela Patel and Kantilal Patel, on behalf of the employer. The latter is the president and a director of the employer; the former two parties are his son and daughter, respectively, who also are employed in the family business--an Indian sweet shop and restaurant.

Although properly notified, the respondent employee, Ms. Sandhu, failed to attend the hearing or otherwise contact the Tribunal to explain her absence. I might add that the Tribunal had previously arranged for an interpreter to be present at the hearing to interpret for Ms. Sandhu. An interpreter did attend the hearing as requested, although this attendance proved to be unnecessary.

FACTS

On the basis of the uncontradicted evidence before me I find as follows:

- Sandhu was working in the restaurant as a “trainee” during the period April 17th to 26th, inclusive, 1996.
- Each day, Sandhu worked a four-hour shift for a total of 36 hours during the period in question.

- In exchange for her services, the employer agreed to pay Sandhu a *per diem* sum of \$20.
- It was understood that if Sandhu proved to be a potentially capable employee by the end of her initial “practicum”, she would be retained as a regular part-time employee at an hourly rate of \$7.
- Sandhu’s services were terminated at the end of her “practicum” because she proved unable to function in Hindi, a major language of the restaurant’s clientele.

ISSUES

The employer’s appeal raises two issues: first, the status of Sandhu during her “practicum” and, depending on the outcome of the first issue, second, her wage entitlement, if any.

ANALYSIS

An “employee” is defined in the *Act* as including “a person being trained by an employer for the employer’s business”. This particular aspect of the definition of “employee” is a complete answer to the first issue--Sandhu was employed Guru Lucky Sweets during the latter part of April 1996.

As for Sandhu’s wage claim, although she claimed to have worked some 85 hours, the employer’s evidence is that, at best, she only worked a four-hour shift each day from 1:00 to 5:00 P.M. most days. The employer’s position regarding the hours it says Sandhu worked was clearly set out in its appeal documentation and stands before me as uncontradicted. Although Sandhu could have attended before me to give evidence on her own behalf, she chose not to do so. Similarly, I have no *viva voce* evidence before from the Director as to the hours worked. Accordingly, I accept the employer’s evidence as to the days and hours worked.

Although there may well have been an agreement between the parties whereby Sandhu was only to receive the sum of \$20 per day during her “practicum”, in my view, this sort of arrangement is void by reason of section 4 of the *Act*. Thus, Sandhu was entitled to be paid at the statutory minimum wage rate of \$7 per hour for all hours worked.

The employer also says that it is entitled to a “credit” in the amount of some \$72 for food allegedly consumed by Sandhu while at the restaurant. The short answer to this assertion is that such a wage deduction is prohibited by the combined effect of sections 21 and 22 of the *Act*.

In summary, I am satisfied that Sandhu is entitled to the following:

36 hours x \$7.00 per hour	= \$252.00
Vacation pay @ 4%	= <u>\$ 10.08</u>

Total = \$262.08

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter be varied so that the amount due and payable to Sandhu thereunder is the sum of \$262.08 together with additional interest to be calculated by the Director in accordance with section 88 of the *Act*.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal