

**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-

Arjuna Smith  
("Smith ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	C. L. Roberts
<b>FILE No.:</b>	98/582
<b>DATE OF DECISION:</b>	October 14, 1998

## **DECISION**

This is a decision based on written submissions by August Arjuna Smith, and a written response from the Director's delegate.

### **OVERVIEW**

This is an appeal by August Arjuna Smith ("Smith"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued August 13, 1998. The Director found firstly, that the complaint had been filed out of time, and secondly, that there was insufficient evidence to establish the length of time Smith had worked in any event. The Director dismissed the complaint.

Smith argues that he worked long enough to support a claim for wages, and that the investigation of his complaint was incomplete.

### **ISSUE TO BE DECIDED**

Whether the Director correctly determined that he had no jurisdiction to consider the complaint, and whether, in the event he was wrong in that finding, that there was insufficient evidence to support the claim.

### **FACTS**

Smith filed a complaint with the Director regarding unpaid wages on December 12, 1997. Smith contended that he was not paid for work performed, although The Splendid Chinese Restaurant ("the Restaurant") did provide him with a meal after work. Smith indicated that he worked from the spring of 1997 to the autumn of 1997, but had no records of the dates.

The Restaurant advised the Director's delegate that Smith did some work in May 1997, but that he worked for one week and for a maximum of 12 hours.

The Director determined that the complaint was filed out of time. As no records were maintained by either party, the Director assumed that if the work was completed in May, he had no jurisdiction to consider the complaint.

However, the Director found that even if the work was done in the fall of 1997, and that the complaint was filed within the time limits prescribed by the Act, there was insufficient evidence to determine the hours worked. The Restaurant said that Smith worked for a maximum of 12 hours. Smith had no record of the time he worked.

### **ARGUMENT**

The Restaurant contends that in May, 1997, Smith volunteered to do some work. As he had no experience, he performed a variety of jobs. It says that he performed those jobs poorly, and worked for only about one week for 1 - 3 hours per day, for a total of about 12 hours. The Restaurant contends that Smith volunteered to do those jobs. When he finished work, they provided him with a meal. Because he was a volunteer, they did not keep records of his hours of work.

Smith provided no evidence on appeal. He argued that he did perform work, and that the Restaurant lied to the Director's delegate.

### **ANALYSIS**

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

Section 74(3) of the *Employment Standards Act* provides that a complaint relating to an employee whose employment has been terminated must be delivered within 6 months of the last day of employment.

Having no evidence of the dates of employment, I am unable to find that the Director's determination is in error. Smith provided no evidence to suggest that the dates of employment provided to the Director's delegate was incorrect.

I agree with the Director that there is no issue with respect to Smith's status as an employee. In that respect, the Director agreed with Smith's position that he was not a volunteer. Nevertheless, he had no jurisdiction to make a determination on wages owing as the time for filing that complaint had expired.

There being no evidence contradicting the findings in the Determination, I deny the appeal.

### **ORDER**

I Order, pursuant to Section 115 of the *Act*, that the Determination, dated August 13, 1997 be confirmed.

**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**