

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 -

Skeena Valley Guru Nanak Brotherhood Society
("the Society")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ian Lawson

FILE NO.: 99/309

DATE OF HEARING: September 23, 1999

DATE OF DECISION: November 17, 1999

DECISION

APPEARANCES

For the Appellant:	Praveen Vohora, C.A.
The Respondent:	Swaran Singh
Interpreter:	Harpreet Kaur Leekha
For the Director of Employment Standards:	Kevin Molnar

OVERVIEW

This is an appeal by the Skeena Valley Guru Nanak Brotherhood Society ("the Society") pursuant to s. 112 of the *Employment Standards Act* ("the Act"). The appeal is from a Determination issued by Kevin Molnar as a delegate of the Director of Employment Standards on April 30, 1999. The Determination required the Society to pay wages, overtime pay, holiday pay and vacation pay in the amount of \$10,686.86 to former employee Swaran Singh ("Singh"). The Society filed an appeal on May 21, 1999. An oral hearing was held at Terrace, B.C. on September 23, 1999.

FACTS

The Society operates the Sikh Temple in Terrace, and it employed Singh as a Sikh Priest at the Temple between July, 1996 and February 10, 1999. Singh was paid a monthly salary of between \$650.00 and \$700.00, medical benefits, and he was given room and board at the Temple without charge. In addition to providing religious services at the Temple, Singh also provided readings of the Sikh Holy Book and other ceremonies for Temple members in their homes. For these services, he received payments from Temple members in amounts ranging between \$25.00 and \$151.00, depending on the services performed. Singh was granted a leave of absence to return to India in October, 1998 for a period of three months. Singh requested an extension of this leave, which the Society denied. Singh returned to Terrace well beyond the three-month deadline and was dismissed upon his arrival. The Determination found that Singh was dismissed with cause, and Singh made no appeal from that decision.

ISSUE TO BE DECIDED

Mr. Vohora, on behalf of the Society, framed the appeal on three points: first, whether the additional payments made to Singh by Temple members should have been included in the Director's calculation of wages paid to Singh; second, whether the room and board provided without charge to Singh should have been treated by the Director as wages paid; and third, whether Singh was an independent contractor instead of an employee.

ANALYSIS

Mr. Vohora submitted that the Director's delegate had misapprehended an essential part of the Sikh tradition, namely the payment of money to a Sikh Priest for services performed in Temple members' homes. Evidence was called to establish that three religious services are important elements of the Sikh tradition, and that these services are customarily performed at Temple members' homes. These services are: Sahaj Path, a reading of the Sikh Holy Book over a period of time; Akhand Path, a non-stop 48-hour reading of the Holy Book; and Ardas, prayers said at a members' residence on special occasions. The Society filed minutes of a meeting of its executive, in which are recorded the honoraria that Singh and the Society agreed would be paid to him by Temple members for these three services: for Sahaj Path, members would pay \$151.00; for Akhand Path, \$101.00; and for Ardas, \$25.00.

Mr. Vohora's point is that the Director's delegate misapprehended the nature of these payments to Singh. Evidence was presented that members would never pay the Priest directly, but would instead place the money in the hands of the Priest's assistant or on occasion in the hands of the Society executive. In due course, this money would be given to the Priest indirectly. When services were held at the Temple, the Society would sometimes withhold a portion of the honoraria and pay the remainder to the Priest. Several witnesses described this procedure, and a list was presented detailing all payments so made by Temple members to Singh. It was submitted that these payments are integral to the Sikh tradition, as they reflect Temple members' expressions of respect and faith for the religious services they receive.

Mr. Molnar pointed out that none of this information was presented in the above fashion by the Society during the course of his investigation. This raises the possibility that I should not allow such "new" evidence when the appellant could have presented it during the course of the investigation. In its defence, the Society submitted that it was unaware of the possibility of this sort of misunderstanding until after it received the Determination. In particular, the Society received requests for records and documents relating to Singh's employment, and it did not occur to them that this sort of information should also have been provided in the manner it was set out before me during the appeal.

In the circumstances, considering the unique nature of the practice of the Sikh tradition and the fact that the appeal addresses the very heart of this practice, I am not persuaded that the Society ought to have known of the possibility of such a cultural misunderstanding and so it should not be prevented from advancing such evidence at the appeal. The possibility of such a misunderstanding, in fact, would amount to grounds to set aside or vary the Determination and it is appropriate that I hear evidence about that possibility. I therefore received this new evidence, including a document identifying a total of 33 payments to Singh by Temple members for various religious ceremonies performed in their homes. These payments amount to a total of \$4,722.00 between April, 1996 and July, 1997.

Having received this evidence and considered the explanations given by witnesses for the Society, it is my view that when Temple members made indirect payments to Singh in return for

religious services, these payments should not be considered "wages;" they are instead offerings of respect given in accordance with established practice in the Sikh tradition. Although it can be said these payments were made to others -- including the Society executive -- who then paid them to Singh, I have difficulty treating them as wages paid to Singh by the Society. I find no error in the Determination in this regard.

The Society submitted that room and board should be treated as wages paid to Singh, and that these wages should be computed at the rate of \$450 per month for accommodations and between \$200 and \$350 per month for board. It is acknowledged by the Society, however, that there was no written assignment by Singh that allowed the Society to "deduct" this sum from Singh's monthly salary. There is no dispute that room and board was described as being "free" to Singh in the minutes of the Society executive meeting which defined the terms of Singh's employment. In the Determination, Mr. Molnar emphasized the agreement that room and board was to be "free," and ascribed no value to it in his calculations of wages paid.

I have the benefit of a previous decision of this Tribunal on this very issue in the context of the terms of employment of priests in Sikh Temples: *Khalsa Diwan Society* [1996] B.C.E.S.T.D. 320.18.50-01; confirmed on reconsideration [1996] B.C.E.S.T.D. 320.39.75-07. In that case, a Sikh Priest was employed at a modest salary, plus medical benefits and "free" room and board. It was held that the value of room and board should be included in the calculation of wages paid to the Priest. Although the issue of a written assignment of wages (or the lack thereof) does not appear to have been considered in the *Khalsa Diwan Society* case, I had the opportunity of examining that issue in *Sophie Investments Inc.* [1998] B.C.E.S.T.D. 84.00.00-01. In that case, the employer agreed to provide its resident caretaker with "free" accommodations plus a wage below the statutory minimum; when the caretaker complained that the minimum wage was not paid, I held that the value of accommodations should be counted as wages paid. Where there is no ambiguity that the terms of employment included accommodations, s. 22(4) of the Act can be interpreted liberally and an assignment of wages may be implied in the employment contract itself.

The final issue raised by the Society on this appeal is whether the Determination was in error by finding Singh was an employee instead of an independent contractor. The Society's executive committee decided that Singh would be paid \$650.00 per month, and would receive a yearly raise of \$25.00. The Society would pay his medical insurance premiums, and he would be entitled to two weeks paid holidays each year. He must give one month's notice of any holidays he takes. Indeed, the Society dismissed Singh for failing to comply with its direction regarding a leave of absence. The Society's witnesses at the appeal described Singh's monthly payment as a salary, and otherwise depicted a relationship which could only be described as master-servant. I find the Determination to be correct in this regard.

In conclusion, the room and board provided "free" to Singh by the Society should be considered wages paid to him. I fix the value of this room and board at \$650.00 per month. The Determination is otherwise correct, and I remit the matter of calculating the wages owing to Singh back to the Director.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Mr. Molnar is incorrect in part and the appeal is allowed in accordance with these reasons. Pursuant to s. 115 of the Act, I remit the matter back to the Director for computation of the wages owing to Singh, upon my finding that room and board in the amount of \$650.00 per month should be included in the calculation of wages paid to Singh by the Society. Singh is entitled to interest pursuant to s. 88 of the Act on the sum calculated by the Director as owing to him by the Society.

Ian Lawson
Adjudicator
Employment Standards Tribunal