

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 -

Bobby McGee's Pub Style Restaurant Ltd.
("Bobby McGee's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Niki Buchan

FILE NO.: 97/392

DATE OF HEARING: September 29, 1997

DATE OF DECISION: October 21, 1997

DECISION

APPEARANCES

Kevin Broughton

For Himself

OVERVIEW

This is an appeal brought by Bobby McGee's Pub Style Restaurant ("Bobby McGee's") of a Determination, dated May 1, 1997, issued by a delegate of the Director of Employment Standards (the "Director") pursuant to Section 112 of the *Employment Standards Act* (the "Act"). The Determination found that Bobby McGee's contravened Sections 17, 58 and 63 of the *Act*. It ordered Bobby McGee's to pay Kevin Broughton ("Broughton") \$2,200.00 for an N.S.F. cheque representing a wage settlement amount which did not clear the bank, \$369.23 as compensation in lieu of notice on termination, vacation pay of \$14.76 and interest of \$16.81 totaling \$2600.80.

The appellant does not dispute that the moneys for wages are owed to Broughton. The appeal submissions only dispute that the Determination found Broughton was an employee and that he was fired. The appellant argues that he was a contractor and that he quit his job.

ISSUES TO BE DECIDED

1. Whether Broughton was an employee?
2. Whether Broughton quit or was terminated?

FACTS

Broughton started work at Bobby McGee's as Chef/Kitchen manager on December 10, 1996. March 11, 1997 was his last day of work at the restaurant.

The appeal documents do not dispute that money is owed to Broughton. The submission statement of Michael Parkhurst states, "We plan to pay Kevin for his services, but feel this is not a labour issue, but rather a business contract issue."

By letter dated, Wednesday, April 30, 1997, Michael Parkhurst responded to a letter regarding Kevin Broughton's claim against Bobby McGee's. He states that Broughton had a verbal contract arrangement for his services at Bobby McGee's. He claims that he was not an employee on salary and comments on scheduling, hiring and tax reporting.

In a submission faxed to the Tribunal on May 29, 1997, Broughton submitted copies of two additional N.S.F. cheques, each in the amount of \$500.00, alleged to be wages owing to him by Bobby McGee's. He states that his agreement when he began his job at Bobby McGee's was that the first \$3000.00 was to be sent to M. P. Hayne of Willowdale, Ontario to help Broughton pay a nursing home bill. These cheques from Bobby McGee's are made out to M. P. Hayne re Kevin Broughton.

The appellant did not appear at the scheduled oral hearing on September 29, 1997.

ANALYSIS

The Determination states that Bobby McGee's did not respond to demands to produce pay roll records and statements concerning Broughton's termination. The Director accepted the information provided by Broughton as being true and correct. The Director argues that after the Determination of May 1, 1997 the appellant raised the above noted new issues at appeal. However, there is a letter on file dated April 30, 1997 from Michael Parkhurst which raised the issues of status and whether he left the position of his own accord. I have no way of knowing whether this was brought to the attention of the Director before the Determination was made as there is no indication when it was received. Sworn evidence at an oral hearing could have brought certainty to this matter.

Since the appellant did not appear at the scheduled oral hearing, I consider that the appeal has been abandon. The Determination is confirmed.

The appeal having been abandoned, I am unable to deal with the allegations of two additional N.S.F. cheques representing wages. If Broughton desires to pursue collection of these amounts he must lodge a new complaint.

ORDER

In summary, I order under Section 115 of the *Act*, the Determination dated May 1, 1997 be confirmed.



Niki Buchan
Adjudicator
Employment Standards Tribunal