



An appeal

- by -

Peter W. Hanslo
(the "Employee" or "Hanslo")

- 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.: 2001/464

DATE OF HEARING: August 31, 2001

DATE OF DECISION: September 12, 2001

DECISION

APPEARANCES:

Mr. Peter Hanslo	on behalf of himself
Ms. Jas Bathe	on behalf of R.M. Gillies & Associates Ltd. (the “Employer“ or “Gillies”)

OVERVIEW

This matter arises out of an appeal by Hanslo pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director issued on May 31, 2001. The Determination concluded that Hanslo was not owed any money by the Employer on account of his complaint to the Employment Standards Branch for overtime and compensation for length of service arising out of his termination by the Employer.

FACTS AND ANALYSIS

Hanslo appeals the determination. He says that the termination was unfair in light of his service with the Employer. As well, he says that he worked overtime hours that he was not compensated for. As the appellant, he has the burden to persuade me that the Determination is wrong. As it will be apparent from the reasons set out below, I am not persuaded that he has discharged that burden.

Turning to the issue of Hanslo’s termination, as I explained at the hearing, I am of the view that the appeal must be dismissed. First, Hanslo, a 14 month employee, was terminated with two weeks’ notice. This is not in dispute. In other words, he received the notice he is entitled to under the *Act*. Even if agreed with his assertions that the termination was “unfair” in light of his service, and there is nothing before me to substantiate this, the Employer has already given him the notice he is entitled to under the *Act*.

On the second issue, the claim for overtime, I agree with the Delegate’s conclusions. The Delegate did not accept that Hanslo had, in fact, worked overtime. The Delegate relied on the Employer’s time sheets which were filled out by Hanslo. Hanslo does not deny this. He says that he was “showing loyalty” to the Employer by not claiming overtime during his employment. I do not accept his assertions. The records were completed by Haslo on a contemporaneous basis. Hanslo now says that these records are not correct--he did, in fact, work overtime hours and the Employer was aware of this--and that I should accept his (detailed) summary of hours worked over the Employer’s payroll records. Hanslo explained that the summary is based on information written by him on a calendar (which was not before me). This summary is not reliable. In the circumstances, I do not accept Hanslo’s records reflecting hours worked by him, and prefer the Employer’s records of hours worked.

Hanslo says that witnesses would support his assertion that he “was sitting there [at his desk, at work] night after night.” These witnesses were not present at the hearing.

Bathe, a CGA in charge of payroll for the Employer, who testified at the hearing, explained that the Employer’s recording of hours is based on an “honours system.” Under that system, employees have some flexibility in terms of hours worked. They complete their own time sheets. If employees submit claims for overtime, those claims are dealt with, for example, in terms of time off--*i.e.*, banking. Bathe said that she had no knowledge that Hanslo worked any overtime. She was aware that he may have stayed at the work place after “regular” office hours from time to time. She thought he was trying to upgrade his computer skills for his “own betterment.” She explained that she, herself, often remained after hours and used the Employer’s computer for her own purposes with permission. Bathe’s testimony was confirmed by Hanslo, in his direct evidence, he said that Bathe asked him why he was not “putting in for overtime,” and he “explained to her that he was learning the computer system.” In my view, it is more likely than not that Hanslo, even if he on occasion remained at the work place after regular office hours, did not perform work for the Employer.

In the circumstances, I agree with the Delegate’s conclusions and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 31, 2001, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal