

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 -

Harbans K. Dosanjh
("Dosanjh")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 97/504

DATE OF HEARING: October 9, 1997

DATE OF DECISION: October 21, 1997

DECISION

APPEARANCES

Harbans K. Dosanjh on her own behalf

Jaginder Dosanjh observer

Kawal Kahlon-Macintosh interpreter

OVERVIEW

This is an appeal by Harbans K. Dosanjh (“Dosanjh”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 006435, dated June 18, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Dosanjh alleges that the delegate of the Director erred in the Determination by concluding that Chateau Quality Drycleaners Corporation (“Chateau”) owed wages in the amount of \$49.99 to Dosanjh.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Dosanjh is owed wages and, if so, what is the amount of those wages ?

FACTS

There is no dispute that Dosanjh was at the premises of Chateau on March 7, 1997.

Dosanjh states that she was asked by Chateau to work on March 7, 1997 and worked for a total of 12 and 1/2 hours. Dosanjh further states that she was promised the wage rate of \$8.00 per hour.

Chateau states that Dosanjh was never an employee and was aware that she was merely was at the workplace for a “try out” without pay. Chateau further states that Dosanjh was only at the workplace for 6 hours on March 7, 1997. Chateau finally states that as they “truly” believed that Dosanjh was not an employee, no records of her hours were kept.

The Director determined that the “benefit of doubt” should be given to the employer with regard to their failure to keep records as Chateau “truly” believed that Dosanjh was not an employee. The Director further determined that the “benefit of doubt” should also be given to the employer with regard to the disputed number of hours worked by Dosanjh. The

Director further determined that as there was no agreement with regard to the rate of pay, the applicable rate should be the minimum wage, \$7.00 per hour.

The Director states that “the employer agrees with my findings and complied by paying \$49.00 for **seven hours** of work at \$7.00 per hour”. (emphasis added)

There was no information provided by the Director with respect to this appeal apart from a copy of the Determination received from the appellant.

There was no information provided by Chateau with respect to this appeal.

ANALYSIS

In the absence of any evidence or information from either the Director or Chateau in this matter, I am left to consider the requirements of the Act and the evidence provided by the appellant, Dosanjh.

The *Act* defines ‘employee’ as:

"employee" includes

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,*
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,*
- (c) a person being trained by an employer for the employer's business,*
- (d) a person on leave from an employer, and*
- (e) a person who has a right of recall;*
(emphasis added)

It is clear from the definition of ‘employee’ that Dosanjh was an employee of Chateau.

The *Act* contains a number of provisions which an employer is required to observe with respect to their employees. Among those requirements is Section 28, which states:

Section 28, Payroll records

(1) For each employee, an employer must keep records of the following information:

- (a) the employee's name, date of birth, occupation, telephone number and residential address;*
- (b) the date employment began;*

- (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;*
- (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;*
- (e) the benefits paid to the employee by the employer;*
- (f) the employee's gross and net wages for each pay period;*
- (g) each deduction made from the employee's wages and the reason for it;*
- (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;*
- (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;*
- (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.*

(2) Payroll records must

- (a) be in English,*
- (b) be kept at the employer's principal place of business in British Columbia, and*
- (c) be retained by the employer for 7 years after the employment terminates.*

Pursuant to Section 81 (1) (a), the Determination must set forth the reasons for the Determination.

The Director has not provided reasons for giving Chateau “the benefit of doubt” in regard to the disputed issues of Dosanjh being an employee and the number of hours worked other than to state that Chateau “truly believed” that Dosanjh was not an employee and no records were required to be kept.

The Director has not provided reasons for concluding that 7 hours were worked when in fact, the Director states Chateau claimed that Dosanjh was only present for 6 hours and Dosanjh claims that she worked 12 and 1/2 hours.

Dosanjh testified that she was asked to work for 8 hours on March 7, 1997 and offered the rate of \$8.00 per hour. Dosanjh further testified that at the end of the 8 hours, there was still a lot of work left to do and Chateau told her that as the next day was a Sunday, she should stay until all the work was completed. Dosanjh further testified that she contacted Chateau on a number of occasions to ask for her pay and Chateau would always give a reason why she would not be paid at that time. Dosanjh further testified that Chateau offered her more work if she would accept \$7.50 per hour cash with no records.

The testimony of Dosanjh with respect to the disputed issues was presented in a credible manner. Dosanjh acknowledged that she did have one meal break during her period of work.

In the absence of any information or evidence from Chateau, and in light of the lack of reasons and inconsistencies in the determination of the Director, I prefer the evidence provided by Dosanjh.

Based on the evidence provided and on the balance of probabilities, I conclude that :

- Dosanjh was an employee of Chateau on March 7, 1997;
- Dosanjh worked 12 hours (12 and 1/2 less !/2 hour meal break);
- the wage rate was to be \$8.00 per hour.

Chateau therefore owes wages to Dosanjh calculated as follows:

$$8 \text{ hrs} \times \$8.00 + 3 \text{ hrs} \times \$12.00 + 1 \text{ hr} \times \$16.00 = \mathbf{\$116.00}$$

For all of the above reasons, the appeal by Dosanjh is allowed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated June 18, 1997 be varied to be in the amount of **\$116.00** together with interest calculated as set forth in Section 88.

Hans Suhr
Adjudicator
Employment Standards Tribunal