

An appeal

- by -

J. K. Painting Ltd.
("J. K. Painting")

- 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: April D. Katz

FILE No.: 2001/485

DATE OF DECISION: September 18, 2001

DECISION

APPEARANCES:

Jagiwan Singh Ranauta	on behalf of J. K. Painting Ltd.
Nav Kambo and Harpreet Kambo	on behalf of Harpreet Kambo
Jim McPherson	on behalf of the Director

OVERVIEW

J. K. Painting Ltd. (“J. K. Painting”), filed an appeal of a Determination dated June 4, 2001 which found that J. K. Painting owed Harpreet Kambo (“Kambo”) \$3,040.34 in regular pay, overtime pay, statutory holiday pay and holiday pay. J. K. Painting disputes the Director’s reliance on Kambo’s records and failure to use J. K. Painting’s records in calculating the amount due to Kambo.

This decision is based on the written submissions.

ARGUMENT

J. K. Painting argues that the Director is “protecting employee with the misleading record”.

Kambo submits that J. K. Painting’s appeal documents do not show a ground for appeal and that this appeal is merely a delay tactic to avoid paying the money due to Kambo.

ISSUE

Did the Director’s delegate err in relying on Kambo’s diary records of hours worked in lieu of J. K. Painting’s records kept on a calendar?

FACTS

The Delegate reported that Kambo needed help with English and relied on a relative to help him. The evidence provided by Kambo included ‘a copy of a letter apparently signed by “Jagiwan Ranauta”. It was written on the company’s letterhead and dated June 16, 2000. Although it is not addressed to anyone it reads, in part:” Kambo “works 60 hours per week, 6 days per week and earns \$8.00 per hour.”

The Determination indicates that both J. K. Painting and Kambo provided records of hours worked. The Delegate calculated the wages on the basis of J. K. Painting’s records and

determined that \$312 was owed to Kambo. The Delegate calculated the amount owing based on Kambo's records and determined that \$3040 was owed.

The records provided by J. K. Painting do not support the 60 hour work week as a normal work week but Kambo's records do. Kambo's records indicate he rarely worked a regular 40 hour week but a wide variety of hours depending on the job site and project. J. K. Painting's records show a fairly regular 40 hour work week. On the weeks J. K. Painting noted overtime Kambo's records matched quite closely. The Delegate assessed the information on hours and concluded the record provided by J. K. Painting's accountant appeared to be written after the fact to match the amount paid to Kambo.

The Delegate concluded that he could not rely on J. K. Painting's records. The Delegate further concluded that Kambo had indicated his hours worked in November 2000 at the time of his complaint. Some months later he produced a record that supported the hours. The hours were irregular depending on the project. The Delegate concluded that Kambo's records were reliable and consistent with the letter stating the normal hours of work.

ANALYSIS

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the evidence from the appellant must demonstrate some error in the Determination, either in the facts accepted, or the factual conclusions reached or in the Director's analysis of the applicable law.

J. K. Painting's appeal states

“why \$312.00 turned into \$3040.34. If employment standards protecting employee with the misleading record and who is going to protect the employer who provides the jobs for public. In this case employment standards not being reasonable for employer.”

J. K. Painting does not dispute the Delegate's conclusion that J. K. Painting's records were created to match the amount paid to Kambo and not at the time the work was done. J. K. Painting did not provide any additional evidence to support the conclusion that Kambo's records were unreliable or denying the letter on the company stationery was accurate.

CONCLUSION

I find based on the evidence presented J. K. Painting has not discharged the onus of proof required to set aside the Determination. The Determination is confirmed.

ORDER

Pursuant to section 115 of the *Act*, the Determination dated June 4, 2001 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal