

**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 -

Donald Mah  
("Mah")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

Adjudicator: Lorne D. Collingwood

File No.: 98/593

Date of Hearing: November 24, 1998

Date of Decision: December 23, 1998

**DECISION**

**APPEARANCES**

Donald Mah  
Bob Pawar

The Appellant  
For Preferred Restoration

**OVERVIEW**

Donald Mah appeals, pursuant to section 112 of the *Employment Standards Act* (the "Act"), a Determination by a delegate of the Director of Employment Standards dated September 8, 1998. Mah's Complaint was a claim for wages for work allegedly performed for Preferred Restoration and Emergency Services Inc. ("PR"). The delegate was unable to establish that Mah actually worked for PR and his Complaint was dismissed.

**ISSUES TO BE DECIDED**

The first issue to decide in this case is, Did Mah perform work for which he is yet to be paid? Should the answer to that question be in the affirmative, the question is then, Who for?

In filing his Complaint, Mah alleged that he was hired by Wayne Hatala, President of PR, in the presence of Carla Windsor of that company, and that he performed five days of work for PR in November of 1997, but was never paid for that work. Hatala and Windsor denied that Mah worked for PR. In dismissing the Complaint, the delegate who issued the Determination reported that she could not "find that an employment relationship existed between Donald Mah and (PR)".

On appeal, the delegate states that she has now concluded that Mah may have worked for a fellow named John Taylor ("Taylor").

Mah says that he was neither hired, nor employed, by Taylor, but hired by Hatala and employed by PR. According to Mah, on the 13th of November, 1997, he received a telephone call from Taylor. Taylor asked if he was interested in work as an estimator. Mah said that he was, and he was at that point passed on to Wayne Hatala, President of PR. Hatala asked for his resume, and he then asked Mah to meet him the next morning in PR's office. Mah and Hatala met as agreed. Salary and other terms of employment were negotiated, with Carla Windsor of PR present; and Mah agreed to an immediate start with salary set at \$25,000 a year.

According to Mah, he was assigned the task of estimating two projects, the Boulevard Club (which may be the Boulevard Club) and 528 Rothchester. He worked the next five days

estimating the jobs, three days at home, two days in PR's office. While working in the office, Hatala paid him several visits to see how he was doing. And Mah says he met and had coffee with several of PR's employees, Linda Aliz and Jerry Hammond included.

On the 18th, as Mah explains it, Taylor called him at home and advised him that his services were no longer required. According to Mah, he then learned that relations between Taylor and PR had soured. At that point, his estimates for Boulevard Club and 528 Rothchester were complete. He sent the estimates to Hatala by fax. And he took the construction drawings for those two jobs back to June Custodio of ConSpec Construction in Burnaby.

May first raised the matter of being paid for his work with Hatala. Hatala told him to talk to Taylor. According to Mah, Taylor led him to believe that he would drop off a pay cheque, but he never did. Mah again contacted Hatala but he was never paid.

PR, through its Controller, Bob Pawar, again denies that it employed Mah. He too suggests that Taylor may have been Mah's employer. According to PR, it has no record of Mah's work and, while it keeps a record of all jobs bid by the company, there is no record of a bid for work on either the Boulevard Club or 528 Rothchester.

## **FACTS**

Mah is a construction cost estimator. He once applied for a job with a fellow named Bruce Taylor, who it is said, owns and operates a company called "Duron". He was told that there was no work for him at the time but that his resume would be kept on record.

John Taylor is the son of Bruce Taylor. It was through his father that Taylor found Mah. Taylor and Mah are not friends. Taylor was President of Preferred Construction Group Inc. ("PC") at the time of the alleged employment. The delegate reports that Taylor said that Mah was hired by Hatala at a salary of \$25,000 a year.

Taylor's business card has both an Edmonton address and Coquitlam, B.C. address on it. Those addresses and the card's telephone number and fax number are those used by PR. PR and PC employ virtually the same logos. The design is the same, only the names of the companies are different, one referring to Preferred Construction Group Inc. and the other Preferred Restoration & Emergency Services Inc..

Mah is no stranger to Hatala. Hatala sent him a fax on Dec. 22, 1997. It is signed by Hatala and says "Please be advised that John Taylor has agreed to pay yourself directly for any work you may have done for John".

Mah produces work sheets and other documents which indicate that he prepared estimates for the Boulevard Club and 528 Rothchester construction projects. Mah describes in detail, the coffee room at PR. He knows the names of PR employees and produces the business cards of several PR employees.

June Custodio was interviewed by the delegate and the delegate reports that Custodio remembered Mah.

## **ANALYSIS**

The delegate has now decided that Mah may have performed work for Taylor. It certainly appears that Mah performed work for someone, be that a person or company, and that he is yet to be paid for his work. From what I can see, his Complaint has been dismissed in error. An employee is entitled to his or her pay on being discharged. Section 18 of the Act provides for that.

18 (1) An employer must pay all wages owing to an employee within 48 hours after the employer terminates the employment.

(2) An employer must pay all wages owing to an employee within 6 days after the employee terminates the employment.

Mah may have worked for Taylor but I am presented with no evidence of that. PR says that it is not Mah's employer but it does not show that to me. It may well be the employer, and when I say PR, I mean, PR, PC, what may well be Preferred Inc. or even some other company or individual. PR may indeed have no record of his employment and I am told that Hatala and Windsor deny that PR is the employer. But I have not heard from either Hatala or Windsor directly, and under oath. I am told that Hatala and Windsor are in a position to gain from denying Mah's employment. Mah says that it was Hatala with which he negotiated the terms and conditions of his employment with Hatala, and he is convincing in that regard. Moreover, Taylor is reported to have said that it was Hatala that did the hiring. And I find, for a person that, it is said, did not work for PR, Mah has a knowledge of PR which is extensive and consistent with work at that office.

As I understand the delegate, she has decided that Mah's Complaint is deserving of further investigation. I agree with that conclusion. There is a need to get to the bottom of the matter of who is the employer. I am therefore referring this matter back to the Director for further investigation. The Director may want to investigate the matter of whether or not Mah performed work in PR's office. The delegate will certainly want to interview Taylor, Hatala, Windsor, and other persons at PR for the purpose of deciding whether Taylor, PR, PC, or some other person, partnership or corporate entity is the employer. On that, I should say that, so far as I can see, PC is PR by another name and that each may only be divisions of a company whose legal name is actually Preferred Inc..

## **ORDER**

I order, pursuant to section 115 of the *Act*, the matter of the Complaint by Donald Mah be referred back to the Director for further investigation.

**Lorne D. Collingwood  
Adjudicator  
Employment Standards Tribunals**