

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 -

(“ Ihsan Abdul Salam ”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Paul E. Love

FILE NO.: 97/762

DATE OF DECISION: December 4, 1997

DECISION

OVERVIEW

This is an appeal, under Section 112 of the *Employment Standards Act* (the “Act”) by Ihsan Abdul Salam from a determination dated September 27, 1997. The major issue is whether during the time period March 7 to 28 he was an employee of the Metropolitan Hotel and entitled to wages. From the evidence before the Director’s delegate it is clear that he was placed at the Hotel as part of a practicum program while enrolled as a student in an educational program. He was not an employee during the practicum and not entitled to wages. The second issue raised is whether the Hotel represented to Mr. Salam that he would be employed on a full time basis. The body of evidence considered by the Director’s delegate supports no such finding. The final issue is whether the Director’s delegate considered the period of August 19 to 21, 1997 in reviewing Mr. Salam’s claim for overtime.

ISSUES TO BE DECIDED

1. Was Ihsan Abdul Salam an employee of Metropolitan Hotel for the period March 7 to 28, 1997 and was he entitled to wages?
2. Did Metropolitan Hotel misrepresent to Ihsan Abdul Salam that he would be hired for a full time position?
3. Did the Director’s delegate consider the period August 19 to 21 in reviewing the claim of Ihsan Abdul Salam for overtime pay?

FACTS

In March of 1997 Ihsan Abdul Salam was a student enrolled in an educational program - Hospitality Services Training Program - operated by the Immigrant Services Society (“ISS”). He was a registered trainee and the program was sponsored by the Ministry of Skills and Training. During the term of that course Ihsan Abdul Salam was paid social services benefits and a training allowance of \$100.00 per month. Part of the program involved a practicum placement in a hospitality setting. ISS placed Ihsan Abdul Salam at Metropolitan Hotel in the stewarding department. Mr. Salam performed well in the practicum program. As a result, Metropolitan Hotel subsequently offered Mr. Salam employment at the hotel. He took this employment and abandoned his attendance at the ISS training program. Mr. Salam worked for Metropolitan Hotel from April 1, 1997 to August 21, 1997.

On August 7, 1997 Mr. Salam gave two weeks notice and terminated his employment. The notice of termination did not allege any misrepresentation by the employer concerning the terms of employment. The Director’s delegate dealt with the claim for misrepresentation,

the practicum issue and a number of other money claims. The Director's delegate found that Ihsan Abdul Salam was owed \$679.89 by Metropolitan Hotel. Metropolitan Hotel paid voluntarily this sum into a trust account held by the Director's delegate, before the date of the Determination.

ANALYSIS

Issue #1: Entitlement to Wages for the Period March 7 to 28, 1997

An employee is defined in the *Employment Standards Act*, R.S.B.C. B.C. 1996 c. 113 as amended Section 1, as including :

“a person trained by the employer in the employer's business”.

In my view the statutory purpose is to provide that an employer who requires an employee to undergo training as a condition of obtaining or retaining employment must pay to the employee wages during the training period. During the period March 7 to March 28, 1997, Ihsan Abdul Salam was a student at a school, engaged in a practicum program at the premises of Metropolitan Hotel. While he was receiving work experience he was in receipt of benefits to which he was entitled as a student in a training program. He was not being trained by Metropolitan Hotel for its business. He therefore is not an employee within the meaning of Section 1 of the *Employment Standards Act*. He therefore is not entitled to wages for this period.

Issue # 2: Misrepresentation as to Full Time Nature of the work

An employer may not induce, influence or persuade a person to become an employee by misrepresenting the terms of employment. If an employer misrepresents to an employee that a job was available for “full time work”, and after the employee took the job only “part time work” was available, this would be a breach of Section 8 of the *Employment Standards Act*. The question in this case is whether Metropolitan Hotel made such a misrepresentation to Mr. Salam.

There appears to have been no cogent evidence before the Director's delegate indicating a misrepresentation made by Metropolitan Hotel concerning the nature of the employment offered to Ihsan Abdul Salam. I have reviewed the statement submitted by Ihsan Abdul Salam and signed by a number of students from the ISS Hospitality Services Training Program. I am unable to put any weight on the statement because it is lacking in particularity, and may well be double hearsay. I am not prepared to make a finding of misrepresentation on the basis of this form of evidence. I note also that there appears to have been new evidence placed before this Tribunal which was not placed before the Director's delegate. It appears that this evidence should have been produced by Mr. Salam to the Director's delegate at the time of investigation.

Metropolitan Hotel did advance a cogent answer to Mr. Salam's complaint in its reply to the Director's delegate dated September 22, 1997. The employer said that it explained to Mr. Salam that the position was not full time but that there would be full time work if other employees were on holidays or there were high business volumes. Mr. Salam was placed at the bottom of the seniority list. The employer trained Mr. Salam to work in two departments, however, there was insufficient work available for Mr. Salam to work full time.

This explanation accords with common sense. An employer would place an incoming employee at the bottom of a seniority list and seek to fill vacancies in any department based on seniority. While it is unfortunate that Ihsan Abdul Salam did not obtain the full time work status that he hoped for, this does not amount to a misrepresentation.

Issue # 3: Entitlement to Wages for the Period August 19 to 21, 1997

Ihsan Abdul Salam claims that the Director's delegate did not address his claim for overtime for the period August 19 to 21, 1997. From a review of the face of the Determination, it appears that the Director's delegate dealt with this issue on page 4.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter dated September 29, 1997 be confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal