

**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-

Janice Jacobsen operating as Royal City Upholstery

(“Jacobsen”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/399

**DATE OF HEARING:** October 14th, 1997

**DATE OF DECISION:** December 4, 1997

**DECISION**

**APPEARANCES**

Janice Jacobsen                      on her own behalf

Christien Shipton                      on her own behalf

No appearance                      for the Director of Employment Standards

**OVERVIEW**

This is an appeal brought by Janice Jacobsen operating as Royal City Upholstery (“Jacobsen” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on April 10th, 1997 under file number 37-781 (the “Determination”).

The Director determined that Jacobsen owed her former employee, Christien Shipton (“Shipton”), the sum of \$3,327.61 on account of unpaid wages.

The appeal was heard at the Tribunal’s offices in Vancouver on October 14th, 1997 at which time I heard evidence and submissions from both Jacobsen and Shipton. I also heard two other witnesses, Elaine Cook, who testified on behalf of the employer and Rita Kundert, who testified on Shipton’s behalf. I understand that subsequent to the hearing, one or both of the parties sent in further documents and/or submissions for my consideration. These submissions were not solicited by me. I have not reviewed those documents and am basing my decision solely on the evidence that was presented at the appeal hearing held on October 14th, 1997 and the documents that were filed either prior to, or at, the appeal hearing.

**ISSUE TO BE DECIDED**

Jacobsen, while acknowledging that Shipton had access to, and worked out of, retail premises situated in Mission, B.C. that had been leased by Jacobsen, maintains that there never was an employment relationship between herself and Shipton.

## FACTS AND ANALYSIS

It must be noted at the outset that the matter before me is an appeal from a Determination. As the appellant, Jacobsen bears the burden of proving that the Determination ought to be cancelled. In my view, there is before me (as there was before the Director's delegate) sufficient evidence upon which it could reasonably be concluded that an employment relationship existed between the parties.

In particular, the evidence before me discloses that:

- Shipton had access to, and attended at, premises leased by Jacobsen and identified to the public as "Royal City Upholstery";
- Shipton had a key to the Mission premises;
- Shipton, while at the Mission store, served "Royal City Upholstery" customers and, according to Jacobsen, was to be paid "in merchandise";
- Shipton occasionally instructed "lampshade" classes offered to the public by "Royal City Upholstery";
- Shipton received, receipted and otherwise accounted for money on behalf of "Royal City Upholstery" customers; and
- Shipton made at least one bank deposit of monies into the Royal City Upholstery bank account.

I also note that on December 20th, 1996 Revenue Canada ruled that Shipton was an employee of Royal City Upholstery during the time when Shipton's unpaid wage claim arose. Although she had the opportunity to do so, Jacobsen never appealed Revenue Canada's decision. I infer from Jacobsen's failure to appeal the Revenue Canada ruling that she accepted that Shipton was her employee during the relevant time period.

In the absence of any evidence to the contrary, I accept that Shipton worked the hours set out in the Determination. However, during the course of her evidence, Shipton acknowledged that she had received a cash payment of \$300 on or about November 14th, 1996 and that this payment should be credited to the employer. Further, Shipton also acknowledged that she did receive the benefit of Jacobsen's labour and materials with respect to a chair owned by Shipton. According, to Shipton, Jacobsen is refusing to return two other chairs that are owned by Shipton.

In my view, and in light of section 20 of the *Act* (which states that wages can only be paid by way of cash, cheque or direct deposit), Jacobsen is not entitled to a credit for the labour and materials for the

one chair that was returned to Shipton. As for the other two chairs, I have no authority under the *Act* to deal with that issue.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter be varied in the amount of **\$3,027.61** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**