

An appeal

- by -

Eike Scheffler operating as Scheffler Farms  
("Scheffler")

- 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.:** 2001/601

**DATE OF DECISION:** November 7, 2001

## DECISION

### APPEARANCES BY WRITTEN SUBMISSION:

Eike Scheffler	on behalf of Scheffler Farms
Erwin Schultz	on behalf of the Director Employment Standards

### OVERVIEW

In a Determination dated July 27, 2001 Eike Scheffler operating as Scheffler Farms (“Scheffler”) was found to owe Harry Poppoff (“Poppoff”) \$600. The amount was determined on the basis of the attributed value to a piece of equipment Scheffler had agreed Poppoff could have to settle Poppoff’s complaint to the Director of Employment Standards (“Director”). Poppoff had filed a complaint on his spouse’s and his own behalf. Scheffler agreed to pay Poppoff’s spouse for work she had done but did not agree to pay Poppoff. The parties settled on Scheffler giving Poppoff a piece of equipment he was not using. Poppoff changed his mind 7 months later and asked for cash. Neither party could produce any record of work performed by Poppoff.

This decision is based on the written submissions.

### ARGUMENT

Scheffler argues that Poppoff did not perform work for which he was entitled to any compensation beyond what he had been paid. Scheffler argues that the work Poppoff had agreed to perform was actually done by others who Scheffler paid directly. Scheffler argues he agreed to transfer the equipment to Poppoff to resolve the dispute but he did not agree that anything was owed to Poppoff. The equipment was left out for Poppoff to take away and he failed to do so. Scheffler does not accept that the Director had evidence that any money was owed to Poppoff.

Poppoff did not make any submissions. The Director submits that Scheffler had an arrangement with Poppoff to perform tasks although there does not appear to have been a consensus about exactly what work Scheffler agreed to pay for. In the absence of any records from either party the Delegate assessed the amount owed to be the amount attributed as the value of the equipment to be given to Poppoff in the settlement.

### ISSUE

Does Scheffler owe Poppoff wages?

## FACTS

Scheffler contracts with 70 people each summer to work in the orchards and at his fruit stand. The parties agree that Scheffler made an arrangement for Poppoff to turn on the irrigation equipment each day and be paid \$10 a day for about 10 minutes work. Poppoff agreed to do the work with his spouse. Poppoff offered to do some work in the orchard and Scheffler agreed to pay him the money he had already advanced to Poppoff plus the transfer of some farm equipment Poppoff wanted. Scheffler's position is that Poppoff did not do the work he agreed to do and Scheffler had to salvage the orchard and pay other people.

Poppoff filed a complaint on September 28, 2000 on behalf of himself and his spouse for wages for work done in the orchard and irrigation and mechanical services and mechanical parts installed. Scheffler denies asking Poppoff to do any mechanical work. Scheffler agreed to pay Poppoff's spouse for her work in the orchard and he paid her.

Poppoff had no record of any hours worked. Scheffler had no record of Poppoff's working any hours beyond the irrigation work. Scheffler believed that Poppoff's spouse did the irrigation work and paid her.

Due to the lack of records the Delegate suggested that the parties try and settle the matter. The parties, including Poppoff's spouse met in November 2000 and Scheffler paid Poppoff's spouse and agreed that Poppoff could have the kangaroo Scheffler owned. Scheffler put out the kangaroo for Poppoff to collect but after several calls and months passing the kangaroo was still where Scheffler left it. In June 2001 Poppoff advised the Delegate he did not want the kangaroo anymore but wanted cash. The Delegate issued the Determination finding that in absence of any records that Poppoff's work was worth the \$600 value of the kangaroo.

## 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.

The Determination clearly sets out that there is a dispute about any work being performed and the amount to be paid for any work. Poppoff had claimed for a number of hours but the Delegate found that he could not verify the rate of pay or the hours worked.

Scheffler denied that Poppoff had performed any work for which he had not been paid. Scheffler paid others to do the work Poppoff claimed he did. The Delegate could find no evidence to support Poppoff's claim. Scheffler denied agreeing to any mechanical work being done by Poppoff. Scheffler's position is supported by the Delegate's finding that one of Scheffler's cheques paid to Poppoff was paid jointly to Poppoff and his spouse. Scheffler's explanation is that he did not believe Poppoff had done the work but that his spouse had done the work.

The Delegate relies on the ‘in kind’ payment in the settlement discussions as a basis for concluding that something was owed. Scheffler states that the kangaroo had very little value to him and that is why he agreed to give it to Poppoff to end the dispute. Scheffler denies agreeing that anything was owed to Poppoff.

The Determination does not make a finding that work was performed and when. The Determination does not find any work performed that was not paid for by Scheffler. I cannot accept that the fact that Scheffler agreed to a settlement, which Poppoff did not complete makes Scheffler liable to pay something to Poppoff.

Before the Determination of amount to be paid can be made the Delegate must find that work was performed and the employee was not paid. That is not possible on the facts available for this Determination.

## **CONCLUSION**

I find based on the evidence presented that there is insufficient evidence to support the finding of wages owing in the Determination. The Appeal is allowed and the Determination is cancelled.

## **ORDER**

Pursuant to section 115 of the *Act*, the Determination dated July 27, 2001 is cancelled.

---

**April D. Katz**  
**Adjudicator**  
**Employment Standards Tribunal**