

An appeal

- by -

Jasbir S. Rai
("Rai")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2001/494

DATE OF HEARING: September 28 and November 14, 2001

DATE OF DECISION: November 27, 2001

DECISION

APPEARANCES:

Jasbir Singh Rai	on his own behalf
Shafik Bhalloo, Barrister & Solicitor	for Gold Oak Custom Furniture Ltd.
Interpreters (Punjabi)	Santosh Thind (September 28th, 2001) & Gulshan Anand (November 14th, 2001)

OVERVIEW

This is an appeal filed by Jasbir Singh Rai (“Rai”) pursuant to section 112 of the *Employment Standards Act* (the “Act”). Mr. Rai appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on June 8th, 2001 (the “Determination”). By way of the Determination, Rai’s claim for unpaid wages was dismissed.

This appeal was heard at the Tribunal’s offices in Vancouver on September 28th and November 14th, 2001. Mr. Rai testified on his own behalf and, in addition, called two other witnesses, Mr. Palvinder Sapra and Mr. Gurmeet Dhillon. All three witnesses testified through a punjabi interpreter.

In addition to the two witnesses’ testimony, I have also considered the various documents and submissions submitted by the parties, and by the Director’s delegate, to the Tribunal.

At the conclusion of the Rai’s *viva voce* evidence--he was the last witness to testify on his own behalf--and prior to the employer’s cross-examination, Mr. Bhalloo, on behalf of the employer Gold Oak Custom Furniture Ltd. (“Gold Oak”), made a motion that the appeal be dismissed on the ground that the appellant had not met his evidentiary burden of raising even a *prima facie* case that the Determination was incorrect.

After hearing from both parties, I allowed the motion and dismissed the appeal. I gave brief oral reasons at the hearing which I will now formalize by way of these written reasons for decision.

ISSUE ON APPEAL

As noted above, the Director’s delegate dismissed Mr. Rai’s unpaid wage complaint filed against his former employer, Gold Oak. During the course of the delegate’s investigation, it was determined that Gold Oak owed Rai a further \$187.20 on account of statutory holiday pay and \$685.71 on account of compensation for length of service. These latter amounts were paid in full by Gold Oak prior to the issuance of the Determination.

The essence of Mr. Rai's appeal is that the delegate erred in dismissing his complaint for unpaid wages allegedly earned during the period June 1st, 1998 to the end of February 1999. Mr. Rai alleged that he was not paid *any* wages during this latter period. Mr. Rai concedes that he was paid for his work (although, as noted above, apparently not paid all of the wages to which he was entitled under the *Act*) during the period from March 1st, 1999 until his employment ended on or about April 19th, 2000.

Gold Oak, for its part, maintained both during the delegate's investigation and before the Tribunal, that Rai's employment did not commence until March 1st, 1999 and that Rai was fraudulently asserting a claim for wages earned prior to that date.

FINDINGS AND ANALYSIS

The director's delegate concluded, at page 3 of the Determination, that "I am not satisfied that Jasbir Rai has provided sufficient evidence to prove his claim that he worked [for Gold Oak] from June 1998 to February 1999". Similarly, I am not satisfied that the delegate erred in so concluding. It is the appellant's burden of proving that the Determination is incorrect and, based on all of the evidence tendered by Rai, I cannot so conclude.

I wish to note at the outset that there is no credible independent corroborating evidence of Rai's assertion that he worked for Gold Oak prior to March 1st, 1999. One has to question why Gold Oak would regularly, and except for a comparatively small amount of statutory holiday pay, properly pay Rai after March 1st, 1999 but not before.

Certainly, and simply as a matter of general experience, employees would not normally work for some nine months without any compensation whatsoever. Rai says he worked for nine months without pay because he "trusted" Gold Oak's principal but, at the same time, he also testified about several unrequited demands for payment and ensuing arguments between himself and the principal during the period in question. How does one trust someone who refuses to pay you and who angrily dismisses your supposedly legitimate claims for payment? I note that Rai did not file his complaint until after his employment ended in the latter part of April 2000.

Rai never filed a tax return for the calendar year 1998 indicating that Gold Oak was his employer and his explanation regarding his failure to obtain a T-4 statement for the 1998 tax year (he contacted Revenue Canada but his complaint was completely ignored; Rai apparently never made any follow-up inquiries) simply does not ring true.

As for his "witnesses", Mr. Saprai testified that he made between three and five deliveries to Gold Oak's premises during which time he saw Rai working at the plant. However, Mr. Saprai was not able to affirmatively state whether those deliveries occurred in 1999 or 2000 (note that Gold Oak concedes Rai was employed after March 1st, 1999). Mr. Saprai testified that "I do not remember making any deliveries in 1998". Further, and most troubling, Mr. Saprai conceded in cross-examination that he had been paid \$100 cash by Rai the day before his appearance before

me. Mr. Saprai also conceded in cross-examination that Rai had previously offered, but that he (Saprai) did not accept, \$400 to tell the delegate that Rai worked for Gold Oak in 1998.

As for the other “witness”, Mr. Dhillon, although he testified that he saw Rai working at the plant in 1998 (Dhillon himself never was employed by Gold Oak), his neutrality is called into question since he is a “good friend” of Mr. Rai and the latter’s brother-in-law). During his cross-examination, Mr. Dhillon stated that he “did not remember” seeing Rai at the plant in 1998 only to return to his original story a short time later, namely, that he regularly saw Rai working at the plant in 1998. I am not satisfied that Mr. Dhillon’s recollection is reliable.

ORDER

Pursuant to section 115(1) of the *Act*, I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal