

An appeal

- by -

Nicholaos Mentzelopoulos
("Nick")

- 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.: 2001/646

DATE OF DECISION: December 13, 2001

DECISION

APPEARANCES BY WRITTEN SUBMISSION:

Nicholaos Mentzelopoulos	on his own behalf
Barbara DeCoteau	on behalf of Denson Holdings Ltd. operating as Queen's Hotel
Ed Wall	on behalf of the Director Employment Standards

OVERVIEW

In a Determination dated August 28, 2001 the Director of Employment Standards' Delegate found that Nicholaos Mentzelopoulos ("Nick") was owed \$486.95 by Denson Holdings Ltd. Operating as the Queen's Hotel ("Queen's"). Neither party could produce accurate records for the period of employment. The Director's Delegate interviewed a number of witnesses and concluded the amounts owed from Nick's list of work dates and the Time Cards submitted. Nick disputes the Delegate's findings.

This decision is based on the written submissions.

ARGUMENT

Nick's appeal alleges that the Director's Delegate knew the owners of Queen's and therefore is biased. He also alleges that another employee was being paid "under the table" and therefore the owners' evidence should not be credible. He asks that he be paid fairly for the work done from October 15, 2000 until March 23, 2001. He states he gave a police report in which he stated that he was an employee as of October 15, 2001.

Queen's argues that they did not know the Delegate personally. Queen's argues they paid Nick on the basis of his Time Cards and that the first one submitted was dated December 3, 2000. Queen's argues that Nick borrowed money from Queen's and other individuals and has not followed through on his promise to repay the money borrowed. Queen's also argues that Nick is claiming money from Queen's in March and April when he was also claiming WCB benefits based on being off work with an injury.

ISSUE

Did the Director err in finding that Nick was not owed more wages or compensation?

FACTS

Queen's gave Nick a room in the hotel without cost and agreed to pay him \$50 per night for working 2AM to 7AM or 8 AM and \$40 per night that he worked the sound system. Queen's believed that the sound shifts would work out to be from about 10PM to 1 AM. Nick was expected to fill out a Time Card and the Time Card was used to determine how much Nick should be paid. Queen's provided the Delegate with copies of the Time Cards.

Nick says he started work on October 15, 2000 and worked until March 23, 2001 when he was injured. Nick states he did a number of specific tasks fixing things in the hotel, upholstering, decorating the bar for Halloween and Christmas, reinforcing the stage, insulating, and building two extensions to the stage. In addition Nick was asked to do a "sound shift" or a "night shift" on occasion. The times when Nick was asked to work were not regular. Nick was also on call when staff was busy. Neither he nor Queen's knew when they would need him.

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.

Nick and Queen's do not agree on the hours worked during his period of employment. There is evidence that Nick was 'on call' in the sense that at least one employee was told to call him if things were busy and she could not handle all the customers. There is no concrete evidence of exactly when Nick worked except his list of hours created after the claim.

The Determination clearly sets out that there was a problem with the record keeping and the reliability of the evidence. Nick's evidence was not original and was global in its hours. He did not report any breaks in 16 hour shifts. The Delegate made allowances for meal breaks and other predictable events during these shifts, which are not disputed in the appeal.

In the appeal submissions Nick alleges that suppliers records would show that he was doing work before December 3, 2000. The Delegate sought this information from the upholstery supplier. The two invoices with Nick's signature and invoiced on November 2, 2000 did not assist in determining when work was performed or for how many hours. The appeal does not have any additional information which would show that the Delegate erred in his conclusions in this respect.

The appeal attacks the credibility of the delegate on the basis that he has a personal relationship with the owners of Queen's. Queen's denies this personal relationship. There is no further support for this allegation and no evidence of bias.

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. No one disputes that Nick worked and was paid. What is impossible to determine is when exactly he worked. This appeal does not add any new

evidence in support of the claim that was not addressed in the Determination. 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 appeal. There is no evidence of a error in the facts or the law in the Determination. I deny the appeal and confirm the Determination.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated August 28, 2001 be confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal