

An appeal

- by -

Natalia Garbuzova
("Garbuzova")

- 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: David B. Stevenson

FILE No.: 2001/671

DATE OF DECISION: December 20, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Natalia Garbuzova (“Garbuzova”) of a Determination that was issued on July 13, 2001 by a delegate of the Director of Employment Standards (the “Director”).

Garbuzova was one of twenty persons who had filed complaints with the Director under the Act alleging they were owed unpaid wages, annual vacation pay and length of service compensation from their former employer, Fetchomatic.Com Online Inc. and/or Fetchomatic Global Internet Inc. (“Fetchomatic”). The Determination associated Fetchomatic with Fetchomatic Global Internet Inc. under Section 95 of the Act, concluded the associated companies had contravened Part 3, Section 18, Part 7, Sections 57 and 58 and Part 8, Section 63 of the *Act* in respect of the twenty former employees, ordered the associated companies to cease contravening and to comply with the *Act* and its requirements and to pay a total amount of \$126,055.66. The Determination concluded that Garbuzova, individually, was owed an amount of \$740.00.

She says that conclusion is wrong and that she is, in fact owed \$1755.83. The difference, \$1,015.83, is annual vacation pay which she says was not paid to her and was not included in the Determination calculation.

The Director agrees that annual vacation pay, by oversight, omitted from the Determination, but has calculated the amount of overtime owing to Garbuzova as \$360.58, plus interest pursuant to Section 88 of the Act.

ISSUE

The issue in this appeal is whether Garbuzova has demonstrated the Determination is sufficiently wrong in its conclusion about the amounts owed to justify the Tribunal exercising its authority under Section 115 of the *Act* to vary it.

FACTS

Garbuzova was employed by Fetchomatic from July 16, 2000 to May 25, 2001 as a programmer. She, along with many other employees, was terminated when the location of Fetchomatic at which she was working closed. In order to secure any available assets, the Director dealt with the many complaints and issued the Determination as quickly as possible. In the Determination, the Director acknowledged the possibility of errors and omissions because the investigation was conducted expeditiously.

Garbuzova has provided material showing the Determination did not include all of the wages she was owed.

Fetchomatic has not filed a reply to the appeal.

ARGUMENT AND ANALYSIS

The burden is on Garbuzova in this appeal to persuade me that the Determination is wrong in law, in fact or in some combination of law and fact (see *Re World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96)). An appeal before the Tribunal is not a re-investigation of the complaint. It is a proceeding to decide whether there is any error in the Determination, as a matter of fact, as a matter of law or as a matter of mixed fact and law, sufficient to justify intervention by the Tribunal under Section 115 of the *Act*.

The appeal alleges an error in a conclusion of fact. In such a case, Garbuzova must show that the conclusion of fact was either based on wrong information, that it was manifestly unfair or that there was no rational basis upon which the factual conclusions could be made (see *Re Mykonos Taverna, operating as the Achillion Restaurant*, BC EST #D576/98).

In this appeal, I am satisfied that Garbuzova has met her burden and that a variance of the Determination to show the wages owed to her as \$1,755.83 is justified.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated July 13, 2001 be confirmed to show the wages owed to Garbuzova to be the amount of \$1,755.83, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal