

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 -

Jugraj Singh Sidhu
(the "Employee")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No: 1999/605

DATE OF HEARING: January 5, 2000

DATE OF DECISION: January 13, 2000

DECISION

APPEARANCES:

Mr. Jugraj Singh Sidhu ("Sidhu")	on behalf of himself
Mr. Sam Sohal ("Sohal")	on behalf of Cariboo Tree Services Ltd. ("Cariboo" or the "Employer")

OVERVIEW

This is an appeal by the Employee pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on September 17, 1999. The Determination concluded Sidhu was not owed wages.

FACTS AND ANALYSIS

The appellant has the burden to show that the Determination is wrong.

It is not in dispute that Sidhu was employed by Cariboo, which operates a tree planting business. He worked for the Employer between May 17 and August 4, 1997, for the first month as a "tree planter" and then as a "brusher". At the end of the employment, following a complaint to the Employment Standards Branch, he was paid an amount owing on account of wages owed. Apparently, Sidhu was paid some \$800 during his employment. A further amount, \$3,236.57 was paid through the offices of the delegate. Hours of work was not in dispute. The Employer alleged, and the delegate agreed, that Sidhu's hourly rate was \$12.00 while working as a tree planter and \$11.00 while working as a brusher. Sidhu claims that the hourly rate should be \$13.00 for the entire period of employment. The issue before me is simply what hourly rate the parties agreed to.

At the hearing a number of individuals testified. Their evidence was brief. Sidhu testified that the agreement with the Employer was that he was to be paid \$13.00 per hour. He stated that Balkar Ghotra ("Ghotra"), a supervisor, told him, in front of Sohal, that his rate would be \$13.00 with the possibility of an increase later. Ghotra, who testified for Sidhu, agreed with this. Ghotra testified that Sohal had told him to hire Sidhu and that he would be paid \$13.00 per hour "to start". When Sidhu commenced working, Ghotra again told him that he would be earning \$13.00 per hour and that Sohal agreed. Another employee, Gurmeet Sekhon ("Sekhon"), who worked for the Employer at the time, confirmed Sidhu's testimony that he was promised \$13.00 per hour with the possibility of a raise after some time. This evidence was not challenged in cross examination.

Sohal, a principal of the Employer, first testified that he may have said that the hourly was up to \$13.00 based on the employee's performance. He subsequently explained that he told Sidhu that his hourly rate was \$12.00 for tree planting and \$11.00 for brushing. The practice, he explained, was to pay inexperienced workers, such as Sidhu, one (1) dollar less than experienced workers until they had proven themselves. Amrik Sing Ghuman ("Ghuman"), another supervisor

employed by the Employer, testified that he did not know at what rate Sidhu was hired--that "was between him and Balkar (Ghotra)". Ghuman confirmed Sohal's evidence that newly hired employees were usually paid one or two dollars less than "regular" employees. At best the Employer's evidence is equivocal.

The delegate made his decision based on the Employer's payroll records, produced through Sohal's accountant (and brother). The delegate based his decision regarding the correct hourly rate on these payroll records and he did not consider it necessary to resolve the issue of credibility of the parties. He viewed the payroll record as conclusive with respect to wage rate. I agree with the delegate that "properly maintained" payroll records must be given considerable weight. In this case, however, I am reluctant to accord the payroll record the weight accorded to it by the delegate. First, the unequivocal evidence presented on behalf of Sidhu was that the hourly rate was \$13.00. The Employer's evidence was much more equivocal. Second, it appears from the context of the evidence that Sidhu was not paid as required by the *Act*, namely at least semi-monthly (Section 17). The accountant did not testify at the hearing. There was nothing in the Determination as to whether and how the information in the payroll record had been translated into the pay statements required under the *Act*. It appears to me that the delegate did not address this issue. Section 27 require that on every payday, the employer provide the employee with a written statement stating, among others, the employee's wage rate. This allows the employee to question discrepancies in the wages paid. If the wage statements had, in fact, provided the information alleged by the Employer with respect to the hourly rate(s), I would have more readily accepted the payroll record as reliable evidence of the hourly rate. In this case, it would appear that Sidhu was paid only once during his employment, which lasted for more than two months. In my view, and in the circumstances, the delegate erred when he accepted the payroll record as conclusive of the issue of the applicable hourly rate.

In the result, I grant the appeal. The Determination states that the amount owed based on an hourly rate of \$13.00 is \$604.12. This calculation is not in dispute. In my view, the Employer must pay this amount plus the applicable interest.

ORDER

Pursuant to Section 115 of the Act, I order that Determinations in this matter, dated September 17, 1999 be varied to the extent that the Employer is ordered to pay \$604.12 plus interest.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal