

EMPLOYMENT STANDARDS TRIBUNAL

Arbutus Environmental Services Ltd
(“Arbutus”)

-and-

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 95/006

DATE OF DECISION: January 15, 1996

DECISION

OVERVIEW

This is an appeal by Arbutus Environmental Services Ltd. pursuant to Section 112 of the Employment Standards Act ("the Act") against Determination #CDET 000015 of the Director issued on November 8, 1995. The Determination was issued following a complaint by Mr. Tom Berkeley, ("Berkeley"), a former employee of Arbutus. Arbutus submitted an appeal through its solicitor on December 1, 1995. The Employer's reason for its appeal was that "...the employee reported and claimed exaggerated hours of work which he did not in fact work."

In a letter dated December 11, 1995 the Tribunal provided Arbutus and Berkeley with copies of information provided by the Director. Arbutus and Berkeley were advised that any written submission they wish to make about the appeal should be forwarded to the Registrar by January 4, 1996. Arbutus did not make a written submission. The brief submission by Mr. Berkeley did not contain any new facts. I have completed my review of the information provided by the Director and the written submission made by Berkeley.

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128(3) of the *Act* states:

If, before the repeal of the former Act, no decision was made by the director, an authorized representative of the director, or an officer on a complaint made under that Act, the complaint is to be treated for all purposes, including Section 80 of this Act, as a complaint under this Act

FACTS

Berkeley was employed by Arbutus as an Equipment Operator from April 8, 1994 to February 14, 1995. His rate of pay was \$15.00 per hour throughout his term of employment. He submitted a complaint on February 16, 1995 concerning the non-payment of overtime pay. A delegate of the Director issued a Determination dated November 8, 1995 in the amount of \$5,673.86. The Reason Schedule attached to the Determination contains the following statement:

I am satisfied that the record shows that overtime hours worked by Mr. Berkeley were not paid at the overtime rate, nor that not all earnings "banked" were paid out at the proper rate. In order to ascertain the precise adjustment

owing to Mr. Berkeley, I have recalculated all hours worked during the period in dispute, and deducted the actual amounts paid by the employer during that period the appropriate vacation pay has been applied.

The calculation schedule attached to the Determination summarizes Mr. Berkeley's earnings information with the following explanatory notes:

- *All hours calculated for the period August 15, 1994, to January 4, 1995, are based on time cards supplied by the employer.*
- *All hours prior to August 15, 1994, and after January 4, 1995, are based on the Complaint's records.*
- *There are only 4 occasions when the employer's and employee's records do not agree for the period August 15, 1994, to January 4, 1995. In these instances, the employer's records have been relied upon (October 27, 1994, December 27,28,29, 1994, and January 8, 1995)*

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Mr. Berkeley was compensated correctly for all hours worked during his period of employment with Arbutus.

ARGUMENTS

In its appeal, Arbutus states that "the employee reported and claimed exaggerated hours of work which he did not in fact work."

Mr. Berkeley denies those allegations and argues that the records provided to the Employment Standards Branch and reported on the schedules attached to the Determination reflect accurately the hours he worked.

ANALYSIS

The onus in this appeal rests with the appellant, Arbutus. As noted above, Arbutus did not make any written submission. The appeal filed on December 1, 1995 by Arbutus does not contain a brief outline of relevant facts nor a statement concerning what remedy is sought from the Tribunal. In short, Arbutus offers no substantive argument why the Determination should be varied or cancelled by way of this appeal. Its only submission is the allegation made on the appeal concerning "exaggerated hours of work."

The information provided by the Director, copies of which were provided to Arbutus and Berkeley, shows that a complete and proper investigation of Berkeley's complaint was conducted. The amount shown as payable on the Determination (\$5,673.86) is supported

by valid reasons and calculations which have not be disputed in any substantive way by Arbutus.

For these reasons I conclude that Arbutus owes wages to Berkeley in the amount calculated by the Director.

ORDER

Pursuant to Section 115 of the Act, I order that Determination #CDET 000015 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

January 15, 1996
Date