

An appeal

- by -

Joseph Rodgers, carrying on business as
Sherwood Roofing
(the “Employer”)

- 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 (as amended)

TRIBUNAL MEMBER: Sheldon M. Seigel

FILE No.: 2009A/144

DATE OF DECISION: January 6, 2010

DECISION

SUBMISSIONS

Ian MacNeill

on behalf of the Director of Employment Standards

OVERVIEW

1. This decision arises out of an appeal pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued March 9, 2009. On May 27, 2009, I issued a decision referring the matter back for re-hearing (BC EST # D054/09).
2. On October 30, 2009, the Delegate issued a Report to the Employment Standards Tribunal ("Report") that resulted from a re-hearing of the evidence from a complaint filed by Mr. Corey Pool ("Mr. Pool") against his former employer Joseph Rodgers, carrying on business as Sherwood Roofing (the "Employer"). As a result of the re-hearing, the Delegate assessed additional penalties for contraventions of the *Act* and made a small adjustment to the wages previously found to be owing to the complainant. On the basis of his re-hearing and recalculations, the Delegate determined that Mr. Pool was entitled to payment from the Employer in the amount of \$8,808.32. This calculation consists of unpaid wages, vacation pay, purchases made for the employer, the return of advances, loans for materials, and business costs.
3. The Delegate also assessed administrative penalties against the Employer totalling \$2,000.00 for contraventions of ss. 18, 21, 27, and 28 of the *Act*.
4. The Tribunal sent copies of the Report to Mr. Rodgers and Mr. Pool but received no response from either party.
5. Section 36 of the *Administrative Tribunals Act* ("ATA"), which is incorporated into the *Employment Standards Act* (s. 103) and Rule 17 of the Tribunal's *Rules of Practice and Procedure*, provides that the Tribunal may hold any combination of written, electronic, and oral hearings (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This appeal is decided on the Delegate's Report and the Director's Record (forwarded to the Tribunal with the Report) alone, in the absence of submissions from the parties.
6. Based on the reasons provided in the Report, and supported by the Record provided by the Delegate, I confirm the award.

ORDER

7. I Order, pursuant to Section 115 of the *Act*, that the March 9, 2009, Determination be varied to show that Mr. Pool is entitled to wages and interest in the amount of \$8,808.32, payable by the Employer. In addition, the Employer is liable for administrative penalties totalling \$2,000.00.

Sheldon M. Seigel
Member
Employment Standards Tribunal