

An appeal

- by -

Shaun Hellmich
(“Mr. Hellmich”)

- 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: Carol L. Roberts

FILE No.: 2015A/39

DATE OF DECISION: January 13, 2016

DECISION

SUBMISSIONS

Shaun Hellmich	on his own behalf
John Dafoe	on behalf of the Director of Employment Standards

OVERVIEW

1. This decision arises out of an appeal by Shawn Hellmich (“Mr. Hellmich”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination of the Director of Employment Standards (the “Director”) issued February 24, 2015. On May 26, 2015, I issued a decision concluding that the delegate had erred in his interpretation and application of sections 79 and 83 of the *Act*. Although the delegate had concluded that Ruskin Construction Ltd. (“Ruskin”) terminated Mr. Hellmich’s employment in part because Mr. Hellmich had filed a complaint about overtime wages, I found no evidentiary foundation that Ruskin terminated Mr. Hellmich’s employment for any reason other than the filing of the complaint, and referred the matter back to reconsider the compensatory award. (BC EST # D046/15)
2. On October 22, 2015, the delegate issued a report on the matters referred back. The delegate agreed that he erred in failing to give full and generous effect to the purposes of section 83 and considered the appropriate remedy. The delegate noted Mr. Hellmich’s brief length of service (less than 15 weeks) and the period of time he was without employment after termination (10 weeks). The delegate found that section 79 of the *Act* was a “make whole” remedy to be applied in a generous fashion. The delegate stated that “... given the clear evidence that Mr. Hellmich was without employment for 10 weeks as a result of the Employer’s contravention of section 83 of the Act ... the appropriate remedy in this case is an award of 10 weeks’ wages.”
3. The delegate found that Mr. Hellmich was entitled to compensation in the amount of \$24,275.85 representing wages and annual vacation pay. As Ruskin has already paid Mr. Hellmich \$3,706.92 in lieu of notice at the time of termination and deposited a further amount of \$4,293.09 in trust following the initial Determination, the balance owed to Mr. Hellmich was \$16,275.84.
4. Ruskin did not respond to the referral back report, while Mr. Hellmich agreed with the delegate’s calculations.
5. I have reviewed the referral back report and the submissions and find no basis to interfere with the delegate’s conclusions or calculations. I confirm the Director’s award of \$16,275.84 to Mr. Hellmich in the Refer Back Report.

ORDER

6. Pursuant to section 115(1)(a) of the *Act*, I order the Determination dated February 24, 2015, be varied to show the total amount owed by Ruskin Construction Ltd., as noted in the referral back report, is \$16,275.84 together with whatever further interest that has accrued under section 88 of the *Act*.

Carol L. Roberts
Member
Employment Standards Tribunal