

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 -

BC & E Light & Power Corporation
(“BC & E”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

Adjudicator: Hans Suhr

File No.: 97/811

Date of Decision: January 6, 1998

DECISION

OVERVIEW

This is an appeal by BC & E Light & Power (“BC & E”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated October 16, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). BC & E alleges that the delegate of the Director erred in the Determination by concluding that Gary Gross (“Gross”) was owed for Statutory Holiday pay. The Director’s delegate concluded that BC & E had contravened Section 45 of the *Act*.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. What was the rate of pay for Gross?
2. Is Gross owed annual vacation pay and statutory holiday pay?

FACTS

Gross was employed by BC & E as an electrician from December 12, 1995 until July 15, 1997.

Gross signed a “contract of employment” which provided, in part, that “I agree to work at the greater of \$7.00 per hour or \$10.00 per agreed hook-up including statutory and holiday pay”.

Gross filed a complaint alleging that he was owed wages for annual vacation pay and statutory holiday pay.

The Director investigated and determined that only the portion of the employment contract which referred to “\$10.00 per agreed hook-up including statutory and holiday pay” was enforceable and further determined that no wages were owing for annual vacation pay as that amount was included in the price per agreed hook-up. The Director finally determined that statutory holiday pay was owing for **only** the period of employment prior to the date the contract of employment was signed.

BC & E argues that Gross was given a \$1.00 per hour increase and that increase was to cover the statutory holiday pay. BC & E further argues that no additional wages are due to Gross.

ANALYSIS

Section 4 of the *Act* is the provision that covers agreements between employees and employers and provides:

Section 4, Requirements of this Act cannot be waived

4. The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.

With respect to the other issues raised in the complaint filed by Gross, annual vacation pay and statutory holiday pay, those requirements are found in Sections 45 and 58 of the *Act*.

In addition to the above requirements, Section 28 of the *Act* is the requirement of an employer to keep certain records. Section 28 (1) provides:

Section 28, Payroll records

28. (1) For each employee, an employer must keep records of the following information:

- (a) the employee's name, date of birth, occupation, telephone number and residential address;*
 - (b) the date employment began;*
 - (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;*
 - (d) the hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;*
 - (e) the benefits paid to the employee by the employer;*
 - (f) the employee's gross and net wages for each pay period;*
 - (g) each deduction made from the employee's wages and the reason for it;*
 - (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;*
 - (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;*
 - (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.*
- (emphasis added)

A number of alleged payroll statements were provided, however, in my view, these do not meet the requirements for pay statements as set forth in Section 27 (1) of the *Act* which provides:

Section 27, Wage statements

27. (1) On every payday, an employer must give each employee a written wage statement for the pay period stating

(a) the employer's name and address,

(b) the hours worked by the employee,

(c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis,

(d) the employee's overtime wage rate,

(e) the hours worked by the employee at the overtime wage rate,

(f) any money, allowance or other payment the employee is entitled to,

(g) the amount of each deduction from the employee's wages and the purpose of each deduction,

(h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for,

(i) the employee's gross and net wages, and

(j) how much money the employee has taken from the employee's time bank and how much remains.

(emphasis added)

Furthermore the wage statements provided do not indicate the year for which the statement is issued, the employee's full name, the name and address of the employer nor do they indicate the hours worked by the employee on each day.

There was no evidence provided of the amount of annual vacations taken or any annual vacation pay paid to Gross nor was there evidence of any statutory holidays taken or the amount of any statutory holiday pay paid to Gross since the date of signing the contract of employment.

There was no evidence provided with respect to the number of hours worked each day by Gross.

The absence of the daily hours worked, annual vacation and statutory holiday records are a contravention of Section 28 (1) (d), (h), (i).

I do not accept the Directors conclusion that Gross is not entitled to annual vacation pay and statutory holiday pay subsequent to signing the contract of employment, as the

employment contract, in my view, does not meet the statutory requirements as set forth in the *Act*.

I further do not accept the Directors conclusion with respect to the wage rate. In my view, both the \$7.00 per hour or \$10.00 per agreed hook-up *including statutory and holiday pay* provisions are contrary to Section 4 of the *Act* and are not enforceable.

Due to the lack of information provided by all parties, I am not able to properly consider the matters being appealed.

Section 115 of the *Act* provides that I may refer a matter back to the Director for further investigation and I am satisfied, in light of the circumstances of this matter, that would be the most appropriate manner in which to deal with this appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated October 16, 1997 be referred back to the Director for further investigation and that such investigation to be completed no later than February 1, 1998.

Hans Suhr
Adjudicator
Employment Standards Tribunal

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