

An appeal

- by -

James Shook
("Shook")

- 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

ADJUDICATOR: Norma Edelman

FILE No.: 2001/755

DATE OF DECISION: January 14, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the "Act") by James Shook ("Shook") from a Determination issued by a delegate of the Director of Employment Standards (the "delegate") on October 5, 2001. The delegate found that CHT Aerospace Inc. ("CHT") owed \$22,581.37 in wages to several former employees. Shook appealed the Determination claiming that he was owed more wages than the amount calculated by the delegate.

ISSUE TO THE DECIDED

Is Shook entitled to more wages than the amount set out in the Determination?

FACTS AND ANALYSIS

CHT ceased operating on September 21, 2001. It was petitioned into bankruptcy on October 10, 2001.

The delegate determined that CHT owed \$22,581.37 to 8 former employees. With regard to Shook, she found he was owed \$2390.48, including \$839.88 for vacation pay.

Shook appealed the Determination on October 29, 2001. In his appeal Shook said the delegate incorrectly calculated his vacation pay. He said the amount of vacation pay that he is owed is \$1190.89.

CHT and the delegate were invited to reply to Shook's appeal. No reply was received from CHT or the trustee for CHT. The delegate forwarded a submission to the Tribunal dated November 20, 2001. In her submission she stated that upon review of Shook's records it appeared that his calculation of wages was accurate and the employer's calculations may have been in error.

The delegate's submission was forwarded to CHT, the trustee for CHT and Shook for their reply. The Tribunal did not receive any replies to this submission.

In an appeal, the burden is on the Appellant to show that a Determination should be varied or cancelled. In this case, I am satisfied that Shook has met the burden to show the Determination should be varied.

Shook claims that he is owed additional vacation pay. He provided some pay stubs to support his position. The delegate essentially agrees with Shook. Neither CMT nor the trustee challenged Shook's appeal or the delegate's November 20, 2001 submission. Accordingly, I can find no

basis to reject Shook's claim that the Determination be varied to show he is owed the additional wages.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination dated October 5, 2001 be varied to show Shook is owed \$1190.89 in vacation pay, with the result he is owed in total \$2737.26 plus interest calculated pursuant to Section 88 of the Act

Norma Edelman
Adjudicator
Employment Standards Tribunal