

An appeal

- by -

Langley Senior Resources Society
(“LSRS”)

- 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.: 2016A/115

DATE OF DECISION: February 20, 2017

DECISION

SUBMISSIONS

Paul Goldberg	on behalf of Langley Senior Resources Society
Shelley L. Wells	on her own behalf
Shelley Chrest	on behalf of the Director of Employment Standards

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Langley Senior Resources Society (“LSRS”) has filed an appeal of a Determination issued by a delegate (the “delegate”) of the Director of Employment Standards (the “Director”) on July 28, 2016. In that Determination, the Director found that LSRS had contravened sections 18, 58 and 63 of the *Act* in failing to pay Shelley L. Wells (“Ms. Wells”) wages, compensation for length of service, vacation pay and interest. The Director ordered LSRS to pay \$7,052.99. The Director also imposed three \$500 administrative penalties for the contraventions, for a total amount owing of \$8,552.99.
2. LSRS appealed the Determination contending that the delegate erred in law and sought to have the Determination varied. In a decision issued December 6, 2016 (BC EST # D155/16), I referred the matter back to the delegate for a reconsideration of the issue of Ms. Wells’ vacation pay entitlement.
3. This decision is based on the delegate’s reconsideration reasons as well as the submissions of the parties.

FACTS AND ARGUMENT

4. The facts and arguments are set out in my original decision and will not be repeated in detail.
5. In brief, Ms. Wells was employed by LSRS from September 10, 2014, until July 13, 2015. LSRS’s Employee Handbook provided that permanent employees were entitled to vacation entitlement of 10 days per year, with a common anniversary date of April 1 for the purpose of calculating that entitlement.
6. The Employment Agreement between the parties provided that Ms. Wells was entitled to 5 weeks per year effective on the hire date, which was stated to be September 10, 2014, and would increase to 6 weeks after one full year of employment.
7. The delegate found that Ms. Wells’ vacation entitlement was governed by the Employment Agreement, and calculated her vacation entitlement from her hire date rather than the common anniversary date provided in the Employee Handbook. The delegate determined that Ms. Wells was entitled to 21 days of vacation based on her starting date of September 10, 2014, and that she took 12 days of paid vacation. The delegate determined that Ms. Wells was entitled to be paid for nine outstanding vacation days based on her salary of July 13, 2015, which calculated to \$3,807.72.

Argument

8. LSRS says that while it agrees with the delegate's approach to the calculation of Ms. Wells' vacation days owing, the delegate erred calculating her entitlement from September 10, 2014. LSRS contends that Ms. Wells began working full time on October 1, 2014, rather than September 10, 2014, as indicated by both the Employment Agreement as well as the December 6, 2016, decision. LSRS says that the calculation should reflect an entitlement of 19.8 days of vacation, based on 9.5 months employment, leaving 7.8 days outstanding rather than 9 days, as calculated by the delegate.
9. Ms. Wells indicated that she agreed with the delegate's calculations "with the exception of the exclusion" of her September time bank hours.

ANALYSIS

10. I find no error in the delegate's conclusion that Ms. Wells was entitled to vacation pay based on the Employment Agreement, a conclusion both parties appear to agree with. That Employment Agreement specifies that Ms. Wells' commencement date was September 10, 2014. While Ms. Wells may have worked on a part time basis from September 10, 2014, until October 1, 2014, the determination is based on the employment agreement between the parties. Given that the employment agreement is silent on the issue of vacation entitlement for the period Ms. Wells worked on a part time basis, I find no error in the delegate's calculations of Ms. Wells' vacation wage entitlement.
11. As found in the original Determination and confirmed in my decision, Ms. Wells' claim for "banked time" was not only not supported by the evidence but outside the six month statutory time period set out in section 80 of the *Act*.
12. I confirm the delegate's reasons in the referral back of Ms. Well's vacation pay entitlement in the amount of \$3,807.72.

ORDER

13. Pursuant to section 115 of the *Act*, I Order that the amount owing in the Determination dated July 28, 2016, be varied to \$6,740.11 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal