

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 -

Victor Noyce
("the "Employee")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No: 1999/625

DATE OF HEARING: December 10, 1999

DATE OF DECISION: February 4, 2000

DECISION

APPEARANCES:

Ms. Carolyn Chalifoux on behalf of Mr. Victor Noyce (“Noyce” or the “Employee”)
Mr. Romano Cortese on behalf of National Building Maintenance Ltd. (“National” or the
“Employer”)

OVERVIEW

This is an appeal by the Employee pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on September 24, 1999. The Determination concluded that Noyce was not owed wages for travel time between work locations. Noyce disagrees with that conclusion.

FACTS AND ANALYSIS

The appellant has the burden to show on the balance of probabilities that the Determination is wrong.

Noyce was employed by National as a janitor between 1996 and March 1999. During his employment, he worked at a number of sites, including Old Orchard shopping centre, Burnaby, Prospero Tower, Burnaby, and Newton Mall, Surrey. Initially he worked at two sites. Later on he worked at four sites, some distance apart. At these sites, he did mostly litter picking. The work was performed at night. The Employer explained that most of the properties managed by it are larger properties, serviced by one employee and, therefore, the issue of travel time does not arise. In rare instances, one employee works at more than one location. Noyce was paid for a certain number of hours work per location, allocated by the Employer, including travel time from one location to the next, according to company policy. Noyce says that he worked the allocated hours at each location, *i.e.*, not including the travel time, and he, therefore, is entitled to be paid for the travel time over and above the allocated hours.

The delegate considered the Employer’s written policy that travel time was included. Noyce “denied that he was aware of the company policy”. The delegate contacted two employees of the Employer who confirmed that they were aware of the company’s policy and that travel time was included in the time allocated to various sites. The delegate concluded that there was insufficient evidence to support the claim for wages for travel time. I agree.

In my view, the Employer’s inclusion of travel time into the time allocated to each site does not generally contravene the *Act*. In other words, as I understand the Employer’s arrangement, employees, for example, work and are paid for a total of six hours allocated between labour and travel time. The total time, they provide labour or services for the Employer is six hours. If the Employer, as alleged by Noyce, required the employees to work the allocated hours at each site, without consideration of travel time between the sites, the Employer would have been in

contravention of the *Act*. To use the example, the employees are required to work the allocated six hours at the various locations and, in addition, are required to travel between these locations, the total hours of work would exceed six, and they would be entitled to be paid for that time. The travel time between locations is a necessary component of the hours of work.

The question simply is whether travel time was included? In that regard I prefer the evidence submitted on behalf of the Employer. First, Noyce was paid on the basis that travel time between properties was included for a number of years. Another employee, who testified for the Employer at the hearing, confirmed that travel time was included. The time card/work schedule submitted by Noyce at the hearing expressly set out the hours he was paid for. Moreover, while he worked for the Employer for a number of years, he never raised the issue with the Employer that he should be paid for travel time. Second, while he kept records of the hours he worked, in addition to the travel time between locations, he never submitted those records to the Employer. If he truly believed that the arrangement with the Employer was that he would work the hours allocated to each property and, in addition, be compensated for the travel time, I would have expected Noyce to have provided the documentation to the Employer when he noticed a discrepancy between the hours he was paid for and the hours he believed he was entitled to be paid for. In the circumstances, I have serious doubts about this documentation. Third, from time to time, the Employer issued a memorandum to the employees which expressly stated that employees “with more than one location in one shift have travel time between properties within the hours allocated for each property”. According to the Determination, Noyce “denied that he was aware of the company policy”. At the hearing, Noyce explained that he “did not recall” seeing the memorandum. There is a difference between not being able to recall something and something not taking place. In other words, he may have seen the memorandum. In my view, given his length of service, it is more likely than not that Noyce was, in fact, aware of the policy. I accept the Employer’s that travel time was included in the time allocated to the various sites and that Noyce, therefore, is not entitled to additional wages.

In the result, I agree with the delegate and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the Act, I order that Determinations in this matter, dated September 24, 1999 be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal