



An appeal

- by -

Revelstoke Home Centres Ltd., operating as Revy Home & Garden
("Revy")

- 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: April D. Katz

FILE No.: 2000/691

DATE OF DECISION: January 22, 2001



DECISION

SUBMISSIONS:

Mark Domaaz	on behalf of Revelstoke Home Centres Ltd.
Joseph T. Spring	on behalf of Joseph Spring
Morley Greenman	on behalf of the Director of Employment Standards

OVERVIEW

The Employer, Revelstoke Home Centres Ltd., “Revy”, appealed the Director of Employment Standards’ Determination issued on September 13, 2000. The Determination found that Revy had failed to pay Joseph Spring, (“Spring”) minimum wage during his employment as a commissioned salesman as required under the *Employment Standards Act* (“Act”). Revy disputes the finding of fact that Spring worked an 8 hour day during his employment from June 3, 1998 to December 6, 1999.

The Determination concluded that Revy owed Spring \$7,674.92 for wages, vacation pay and interest. The Determination found that Revy had contravened Part 3 Section 16 of the *Act*.

ISSUE

Did the Director err in finding that Spring worked an 8 hour day during his employment?

ARGUMENT

Revy’s appeal is based on their belief that Spring could not have worked 8 hours a day based on the number of ‘leads’ Revy gave Spring to follow with possible customers. Revy argued that there was not enough business to justify 8 hours of work per day. Revy did not provide the Director’s Delegate with any documentation during the investigation to support this argument because they did not want the information to be shown to Spring. The Delegate would not guarantee that he would not show Revy’s evidence to Spring.

Revy argues that the Sales Agent Employment Agreement, (the “Agreement”), signed by Spring and Revy on July 13, 1998 sets the maximum number of hours per week at 40 hours but that does not mean Spring worked that many hours. Revy submits that Revy provided all the leads that Spring followed and from the number of leads provided the job was not full time.



Spring disputes that Revy referred all the customers he pursued in looking for business. Spring refers to clause 2 of the Agreement which restricted him to working exclusively for Revy. He indicated that the information provided by Revy about the number of leads they gave him only covered 4 months of his employment period. He stated in his evidence to the Delegate that he worked more than 8 hours per day on many occasions and made no claim because the Agreement stated he would not be paid overtime without previous permission from Revy to work overtime.

In his supplementary submission Spring states that the follow up with customers included measurements, calculation of costs, drafting contract proposals, preparing sales presentations with product samples, contacting clients to set up meeting times and return visits to close the contract. The number of leads does not describe all the work involved.

THE FACTS AND ANALYSIS

The sole issue is whether the Director's Delegate erred in concluding that Spring was entitled to compensation for an 8 hour day during his employment. There is no dispute on the quantum of the Determination if Spring worked a 40 hour week.

Revy did not keep any records of hours worked contrary to section 28 of the *Act*. The only information Revy provided was that there were not enough leads to justify a 40 hour week. The actual information about some of the leads was submitted after the Determination was issued. Spring had a day timer during his employment but he could not find it for the Delegate.

The Tribunal has consistently concluded that it will not consider evidence that was available during an investigation but was not submitted to the Delegate. The purpose of the *Act* is to provide "fair and efficient procedures for resolving disputes over the application and interpretation" of the *Act*. Delegates are able to resolve most complaints because they have the information they need to make a fair decision. If some parties hold back relevant information for an appeal the procedures will no longer be fair and efficient as the *Act* requires. Based on this principle the information on the leads submitted with the appeal carries no weight in this appeal.

Clause 17 of the Agreement required Spring to keep an accurate record of the actual hours worked each day and submit a report to the Revy on Monday of each week. This was not done and Revy never asked for this information. Clause 17 goes on to say

"It is understood and agreed that in the event the Employee fails or neglects to submit any such report, **it shall be presumed that the Employee worked 8 hours each day, for 5 days during the 7 day period**, and that no day worked was statutory holiday."



The Delegate relied on the presumption in clause 17 of the Agreement to reach the conclusion that Spring worked a 40 hour week.

The Delegate reviewed the relevant legislation and the Interpretation Guidelines Manual which state that a commissioned sales person is to be paid minimum wage in any pay period where the commissions payable are less than the minimum wage. The Delegate then compared what Revy paid Spring and what Spring would have been entitled to if he was paid minimum wages. Revy did not dispute the calculation of the amount owing if the fact of working a 40 hour week was accepted.

Revy has had prior complaints filed dealing with the same issue of failing to keep records and pay minimum wages to commissioned sales people. The Director had drawn the requirements of sections 16, 17 and 28 of the *Act* to Revy's attention as a result of a complaint in February 1999.

CONCLUSION

Based on the evidence presented I find no basis on which to conclude that the Director erred in reaching findings in the Determination. I confirm the Determination finding that Spring worked a 40 hour week and was entitled to minimum wage for each week he worked plus statutory vacation pay.

ORDER

Pursuant to section 115(1)(a) of the *Act*, the Determination dated September 12, 2000 is confirmed. Pursuant to section 115 (1)(a) of the *Employment Standards Act*, the Determination against Revy is confirmed, plus interest pursuant to Section 88 of the *Act*.

APRIL D. KATZ

April D. Katz
Adjudicator
Employment Standards Tribunal