

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 -

Mohinderpal Bishram o/a Tejy Janitorial Services
("Bishram")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE No: 1999/609

DATE OF HEARING: December 17, 1999

DATE OF DECISION: January 24, 2000

DECISION

APPEARANCES

Sukhjinder S. Grewal	Counsel for the employer
Mohinderpal Bishram	
Sukhchain Toor	Witness

OVERVIEW

Mohinderpal Bishram o/a Tejy Janitorial Services (“Bishram”, also, “the employer”) appeals a Determination by a delegate of the Director of Employment Standards dated September 17, 1999. The appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”).

The Determination orders Bishram to pay Lakhvir Singh Sidhu wages including overtime and vacation pay of \$1,231.36. The delegate found that Bishram had failed to keep a record of hours worked as the *Act* requires. The Determination relies on the employee’s record of work. That shows a 10 hour day and a six day work week.

The appeal is that the calendar record overstates the number of hours worked and that the Determination is wrong for that reason. Bishram also claims the Determination is wrong in that it has Sidhu working 10 hours on August 8, 1998 when the employee’s time card shows that he had that day off.

Bishram on filing his appeal also claimed that the delegate had a personal relationship with the employee and is biased. The claim was dropped at the outset of the hearing for reason of a lack of evidence.

ISSUE TO BE DECIDED

What I must decide in this case is the matter of whether the employer shows or does not show that the Determination ought to be varied or cancelled for reason of an error in fact or in law.

FACTS

Sidhu was employed by Bishram from August 1, 1998 to September 1, 1998. He was one of several janitors assigned to the Grandview location of the Real Canadian Superstore.

Time cards show when the employee started work and when he ended work. The time cards indicate that Sidhu did not work on the 8th of August, 1998.

The employees were not in the habit of punching out and in for lunch. The Determination reflects a conclusion that Sidhu took a one hour break for lunch on all days worked.

According to Bishram, all of the employees, Sidhu included, started work at 10:00 p.m. and stopped work at 9:00 the next morning, except for the Friday/Saturday shift when they stopped at 8:00 a.m.. He claims, however, that those hours were to suit the employees and their need to get rides to and from work. The hours of work were eight on most days and seven in the case of Friday/Saturday shifts. I accept that, nothing clearly to the contrary and for reason of testimony by Sukhchain Toor.

Toor was in charge of the crew that cleaned the Grandview Superstore during the period of Sidhu's employment. Toor does not currently work for Bishram. I am not given any reason why I should disbelieve the man in any way. He, without hesitation, gave me a clear and completely plausible answer to each and every one of my questions. That includes his answer to why the employees would only work 7 hours in the case of the Friday/Saturday shift, when they could easily have worked eight. The reason he gave is that they did not wax the floor on that day and so they did not have to work as long as they did on other days. He confirms that all of the employees took two long breaks in the night and that the reason that they started and stopped work when they did is that it was what the crew wanted to do. Most importantly, he confirms that Sidhu worked 8 hours on all days but Friday/Saturday shifts when he worked only 7 hours, just like everyone else.

Sidhu offers nothing which is clearly to the contrary, for the reason that he did not attend the Tribunal's hearing. He was notified of it. I delayed its start for awhile, then decided to proceed with the appeal in his absence. At that time, or there about, he telephoned the Tribunal to say that he would be late. He had not appeared by the time I adjourned the hearing, which was at precisely, 11:30 a.m..

The employer accepted an offer to settle Sidhu's claim and paid \$230 to Sidhu, through cheques in the amounts of \$70 and \$160. Those cheques were cashed with moneys being held in trust.

ANALYSIS

The employer has shown that Sidhu did not work on August 8, 1998.

As matters have been presented to me, the employer succeeds in showing that Sidhu very likely did not work the hours shown on his calendar but 8 hours, except in the case of Friday/Saturday shifts, when he worked 7 hours.

Taking into account the fact that Sidhu did not work on the 8th of August, that he only worked 7 hours on working Friday/Saturday shifts, and that he only worked 8 hours on all other days worked, I find that Sidhu had earnings of \$1,608 including overtime pay. The overtime pay reflects the fact that he worked more than 40 hours in the week beginning August 7 and that beginning August 16.

Sidhu is owed 4 percent vacation pay on top of that amount of wages. That brings me to a total of \$1,672.32. His employer paid him only \$1,248. As such it remains that he is owed \$424.32.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated September 17, 1999 be varied. Mohinderpal Bishram o/a Tejy Janitorial Services owes Lakhvir Singh Sidhu \$424.32 (\$194.32 plus the \$230 which is now held in trust).

**Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal**