

**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 -

**WARREN CONSULTING LTD.**  
(" Warren ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ian Lawson

**FILE No.:** 1999/589

**DATE OF DECISION:** January 21, 2000

**DECISION**

**OVERVIEW**

This is an appeal by Warren Consulting Ltd. ("Warren") pursuant to s. 112 of the Act. The appeal is from a Determination issued by John Dafoe, a delegate of the Director of Employment Standards on September 10, 1999. The Determination required Warren to pay wages and overtime pay to its former employee James Cooper ("Cooper") in the amount of \$9,065.39.

Warren filed an appeal on October 1, 1999. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

**FACTS**

Cooper was employed by Warren as a forestry technician between May 8, 1997 and November 8, 1997, when he was terminated. Warren alleged Cooper had intentionally damaged company equipment, had spent an excessive amount of time attending to personal affairs during office hours, and had stolen a computer software program disk. Cooper alleged he was required to work an extensive amount of overtime hours without receiving overtime pay, and that there were insufficient grounds to justify his dismissal. The Director's delegate rejected Cooper's claim that he was dismissed without just cause or notice, but found as an undisputed fact that Cooper was not paid for work performed after October 31, 1997. Cooper's claim for overtime hours was allowed by the Director's delegate, with some reductions in total hours claimed.

Warren raises two issues on the appeal: first, the Determination was made without adequate proof of the overtime hours claimed by Cooper, particularly hours claimed for in-office work when no other employees were present; second, Cooper's claim of overtime hours was based on fraud, which the Director's delegate failed to ascertain.

**ISSUE TO BE DECIDED**

This appeal requires me to decide whether there is any error made in the Determination with regard to overtime pay.

**ANALYSIS**

Warren attached to its notice of appeal a letter it sent to Cooper on March 3, 1997, setting out his terms of employment. The first paragraph of that letter reads as follows:

Warren Consulting Ltd. is prepared to offer you a job as a forestry trainee beginning May 1, 1997. Your base rate of pay will be \$15.00 per hour including travel time both ways from the base of operation, e.g. Houston office or logging camp. All hours of work will be paid at straight time, although summer hours are often in excess of 10 hours/day.

This term of the employment contract is clearly in breach of the minimum standards for hours of work set out in the Act; any work performed by Cooper beyond the statutory maximum per week must result in overtime pay.

The Director's delegate, however, found Cooper's report of hours worked to match with the full payroll records disclosed by Warren, although Cooper's records were "more extensive:"

There is no dispute as to the hours of work, save for the Employer's claim that the hours spent in the office are clearly inflated based on the evidence of personal phone calls, resume preparation and internet use. I have accepted the Employer's arguments to a point, finding that the hours of work are as set out in the time sheets save for the following adjustments based on the evidence provided: 25 Sept. deduct .5 hour, 26 Sept. deduct .25 hours, 6 Oct. deduct .25 hour, 9 Oct. deduct .5 hour, 20 Oct. deduct 4 hours, 3 Nov. -- 1.5 hours, 5 Nov. -- deduct .5 hours, 7 Nov. deduct 1.75 hours (in each instance from the hours shown on the time sheets).

In its written submission, Warren presents a calculation of how Cooper should have spent his time working on a particular project, and argues that Cooper could not have spent the hours he claimed doing computer work in-office. Warren then repeats an argument which is simply untenable given the Act's minimum requirements:

Cooper was made very clearly aware before he was hired that due to the nature of the work, overtime hours would not be paid. But in lieu of overtime pay, his regular hourly rate would be high enough to exceed the industry standard for this type of work and by making all hours worked the same rate of pay, he would not be restricted to the number of hours he worked (all overtime hours were worked at the employees discretion --not a company requirement).

Warren does not present, however, any evidence or argument that indicates the Director's delegate made any error in calculating the overtime hours worked by Cooper. In its appeal letter, Warren disputes the award of overtime for hours which Warren itself could not prove were improperly worked by Cooper. In other words, Warren argues Cooper worked more hours than it believed were necessary, but it has no proof that Cooper's report of hours worked was incorrect. Its appeal letter further alleges that Cooper's claim of overtime was fraudulent, but the only evidence presented was Warren's calculation of the time that Cooper should have needed to do the work required of him.

In my view, Warren placed itself in a dangerous position for an employer by failing to adequately supervise Cooper's hours of work. Had Warren implemented a simple approval system for overtime hours, and had it acknowledged the Act's minimum standards in that regard, this dispute would never have arisen. Warren's inability to establish that Cooper's claimed hours were unnecessary or fraudulent leads to my conclusion that the Director's delegate made no error in approaching the problem as he did, and the appeal must be dismissed.

**ORDER**

After carefully considering the evidence and argument, I find that the Determination made by John Dafoe is correct and the appeal is dismissed. Pursuant to s. 115 of the Act, I order that the Determination dated September 10, 1999 be confirmed, together with interest pursuant to s. 88 of the Act.

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**Ian Lawson**  
**Adjudicator**  
**Employment Standards Tribunal**