

An appeal

- by -

Jason Glacken  
("Glacken")

- 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:** Norma Edelman

**FILE No.:** 2001/807

**DATE OF DECISION:** January 18, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") by Jason Glacken ("Glacken") from a Determination issued by a delegate of the Director of Employment Standards on October 30, 2001. The delegate found that Rotair Pacific Industries Ltd. ("Rotair") owed \$61,559.27 to several former employees. Glacken appealed the Determination on the basis that the amount of vacation pay found to be owed to him was incorrect.

### ISSUE TO BE DETERMINED

Is Glacken owed the amount of vacation pay set out in the Determination?

### THE FACTS AND ANALYSIS

In the Determination the delegate said that Rotair was placed into receivership on September 17, 2001 and that he had partially completed an investigation to determine what wages were owing to the employees of the company. He included a calculation sheet, which showed the amounts owing to each employee. He said the Receiver and Rotair determined the amounts. He further said the Determination was an interim one that set out the minimum amounts known to be owing to the employees and on completion of his investigation if it was determined that additional wages were owing, those wages may be included in a further interim or final determination. With respect to Glacken, the delegate found he was owed a total of \$61.88 for vacation pay and \$752.05 representing withheld RRSP deductions.

Glacken appealed the Determination on the basis that the amount of the vacation pay found to be owed to him was incorrect. He did not indicate exactly how much vacation pay he thought Rotair owed him.

Both the Receiver and the delegate replied to the appeal.

The Receiver stated that after reviewing Rotair's records, it determined that Glacken was owed vacation pay in the amount of \$1,530.54.

The delegate stated he issued the Determination using amounts believed by the Receiver and Rotair to be correct "...so as to effect the priority set out in the *Employment Standards Act* Section 87 and in an effort to pay out the outstanding wages prior to Christmas." He further stated that before proceeding further with the appeal the Tribunal ought to consider directing the Receiver and Glacken back to the delegate for a closer examination of the amount claimed by Glacken.

Glacken was invited to reply to the submissions filed by the delegate and the Receiver. No reply was received from Glacken.

In an appeal, the burden is on the Appellant to show that a Determination should be varied or cancelled. In this case, I am satisfied that the Appellant, Glacken, has met the burden to show the Determination should be varied.

Glacken claimed the amount of vacation pay set out in the Determination was incorrect. The Receiver agreed that the amount was incorrect and substantially increased the amount found owing to Glacken. The Receiver provided records to support the new amount. Glacken does not dispute the new figure. Accordingly, I can find no reason to refer this matter back to the delegate for a "closer examination" insofar as I am satisfied that the amount of vacation pay owing to Glacken is \$1530.54.

#### **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated October 30, 2001 be varied to show that Glacken is owed \$1,530.54 for vacation pay plus \$752.05 for the RRSP withholdings for a total of \$2,282.59 by Rotair.

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**Norma Edelman**  
**Vice-Chair**  
**Employment Standards Tribunal**