

An appeal

- by -

George Anderson Stewart
("Stewart")

- 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.: 2001/813

DATE OF DECISION: January 18, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") by George Anderson Stewart ("Stewart") 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. Stewart appealed the Determination on the basis that he is owed more compensation for length of service than the amount calculated by the delegate.

ISSUE TO BE DECIDED

Is Stewart entitled to more compensation for length of service than the amount 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 showing 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 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 Stewart, the delegate found he was owed \$68.75 for vacation pay, \$2,080.00 for compensation for length of service and \$610.00 representing withheld RRSP deductions.

Stewart appealed the Determination on the basis that the award for compensation for length of service was incorrect. Stewart stated that he is owed 3 months compensation based on an oral contract that he had with Robert Lawrence, the General Manager and one of the director's of Rotair. The agreement consisted of Stewart agreeing to give the company three months notice if he quit and in exchange, he would get three months notice of termination of employment.

Both the Receiver and the delegate replied to the appeal.

The Receiver stated that Stewart was employed by Rotair from February 21, 2000 to September 7, 2001, and therefore he is owed two weeks of compensation calculated as follows: Stewart's hourly rate of \$25.00 per hour times the 40 hours he worked per week times 2 weeks, plus vacation pay = \$2,080.00.

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 Stewart back to the delegate for a closer examination of the amounts claimed by Stewart.

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

In an appeal, the burden is on the Appellant to show that a Determination should be varied or cancelled. In this case, I am not satisfied that the Appellant, Stewart, has met the burden to show the Determination should be varied or cancelled.

Section 63 of the *Act* provides that after 12 consecutive months of employment, an employer must provide compensation in an amount equal to 2 weeks wages; after 3 consecutive years of employment, the amount of this compensation increases by one weeks wages for each additional year of employment, to a maximum of 8 weeks wages.

The Tribunal has held on other occasions that it has no jurisdiction to find that any amount of notice greater than the statutory minimum must be given by an employer (see for example *Helen Stark* BC EST#D367/96). I agree with that approach. Although Rotair may have agreed to provide Stewart with three months notice (and I note the alleged agreement concerns notice and has absolutely nothing to do with compensation in lieu of notice), the Tribunal is unable to award anything beyond the minimum notice or compensation required under the *Act*.

The Receiver says the amount of compensation owed to Stewart is \$2080.00, which is the equivalent of 2 weeks wages. Stewart did not challenge the Receiver's submission. In particular he did not dispute that his length of service amounts to 18 months and that he worked a 40-hour week at \$25.00 per hour. I am satisfied, therefore, that Stewart's entitlement under the *Act* amounts to two weeks wages or \$2080.00 which is the amount set out in the Determination. I see no need to refer this matter back to the delegate as I accept that the Receiver has correctly calculated the amount of compensation owed to Stewart.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated October 30, 2001 be confirmed regarding the amounts owed to Stewart.

Norma Edelman
Vice-Chair
Employment Standards Tribunal