

An appeal

- by -

Gerald Lentz
(the “Appellant”)

- 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 (as amended)

TRIBUNAL MEMBER: Rajiv K. Gandhi

FILE No.: 2016A/6

DATE OF DECISION: March 8, 2016

which Mr. Lentz *almost never* worked just 32 hours per week. That is, the Director found that there were no “normal weekly hours of work” and, therefore, he relied upon the calculation of “average weekly hours of work” for the purpose of calculating the regular wage.

11. This is consistent with the *Act* and with the practice previously accepted by the Tribunal in *Kocobani Holdings Ltd.*, BC EST # D337/96.
12. The calculation laid out in the Determination is mathematically correct, and the Director’s conclusion does not, in my estimation, offend any of the five points enumerated in *Gemex, supra*.
13. The Director’s second error, according to the Appellant, lies in the wage recovery period calculated according to section 80(1) of the *Act*. The Appellant submits that the first date of that period should be April 30, 2014.
14. Section 80(1)(a) of the *Act* provides that:
 - 80 (1) *The amount of wages an employer may be required by a determination to pay an employee is limited to the amount that became payable in the period beginning*
 - (a) *in the case of a complaint, 6 months before the earlier of the date of the complaint or the termination of the employment...*
15. Section 80(1)(b) of the *Act* does not apply.
16. The Director found that Mr. Lentz resigned his position with the employer on October 30, 2014. The complaint was not filed until January 21, 2015.
17. According to section 80(1)(a) of the *Act*, and having regard to the definition of “month” in section 29 of the *Interpretation Act*, R.S.B.C. 1996, c.238, I agree that the first day of the wage recovery period would be May 1, 2014. The last day is October 30, 2014.
18. The Director’s calculation is correct and, again, I see nothing to suggest that the methodology used fails the test outlined in *Gemex*.
19. Having found both of the impugned calculations to be correct, there is no error of law, and no reasonable prospect that this appeal will succeed.

ORDER

20. Pursuant to section 115 of the *Act*, I confirm the Determination issued on November 30, 2015, and I dismiss this appeal pursuant to section 114(1)(f) of the *Act*.

Rajiv K. Gandhi
Member
Employment Standards Tribunal