

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

-by-

Bill Buck Operating as Starlite Painting Co.
("Buck")

-of a Determination issued by-

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: E. Casey McCabe

FILE NO.: 96/661

DATE OF DECISION: January 22, 1997

DECISION

APPEARANCES:

Bill Buck on his own behalf
Donald M. Howell on his own behalf
Peter F. Glemnitz on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by Bill Buck operating as Starlite Painting Co. ("Buck") pursuant to Section 112 of the Employment Standards Act (the "Act") against Determination CDET No. 004282 issued by a delegate of the Director of Employment Standards on October 9, 1996. The Delegate determined that the employer failed to pay wages upon termination contrary to Section 18(1) and that the employer failed to pay vacation pay as required under Section 58(1) of the Act. The employer appeals.

ISSUES TO BE DECIDED

Is the employer obligated to pay unpaid wages at termination and vacation pay on all wages earned? What are the disputed amounts?

FACTS

Donald Howell was hired as a painter by Bill Buck on June 8, 1996. He worked for Buck until July 6, 1996. Mr. Howell worked irregular shifts at a rate of \$12.00 per hour. The Director's delegate determined that Mr. Howell was owed \$2,292.00 wages plus 4% vacation pay of \$91.68 for a total of \$2,383.68 less \$680.00 wages received for a grand total of \$1,703.68. Mr. Howell claims that despite being told at the beginning of the job that there would be no problem with getting paid he was not paid in full. He states that the employer would put off the requests for payment. The employer promised to pay on July 18, 1996 but did not. The employer refused to answer his phone or respond to the messages Mr. Howell would leave. Mr. Howell filed his complaint on August 16, 1996.

In a submission dated November 1, 1996 Buck states that Mr. Howell was paid "everything except \$310.00" and that he was paid in cash. The employer states that Mr. Howell's wage rate was \$9.00 per hour. The employer further states that he was not able to pay the balance because he did not get paid for the job. The employer states that he is "going to Court on November 18, 1996" presumably over his unpaid account.

The Director's delegate states that during his investigation Buck said that he had lied the last job and that the parties had agreed that Mr. Howell was only owed \$1,000.00 for the remainder of his wages. The Director's delegate was not satisfied with this explanation and the Determination in the amount of \$1,703.68 was issued.

ANALYSIS

On December 5, 1996 the Director forwarded to the parties the documents and calculation sheets used in making the Determination. Both parties were given to December 27, 1996 to make further submissions. Neither party did. I must therefore make my decision on the material before me.

Appeals processed under Section 112 of the Act place the onus on the appellant to show that the Determination under appeal is wrong. In this case Buck states that the complainant was earning only \$9.00 per hour and that he was paid all but \$310.00 in cash. However that is only a bald assertion. Buck did not produce any payroll records to substantiate his defence. Neither did he produce any records from the apparent court date of November 18, 1996 nor has he made any attempt to keep the Director informed of those proceedings. For these reasons I dismiss the appeal.

ORDER

I order, pursuant to Section 115(1) of the Act, that Determination No. CDET 004282 be confirmed.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal