

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-

Uni-Prep Enterprises Ltd.

(“Uni-Prep” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/747

DATE OF DECISION: February 11th, 1999

DECISION

OVERVIEW

This is an appeal brought by Uni-Prep Enterprises Ltd. (“Uni-Prep” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on November 3rd, 1998 under file number 024-773 (the “Determination”).

The Director determined that Uni-Prep owed its former employees, Clint Wood (“Wood”) and Michael Rodrigues (“Rodrigues”), the sum of \$1,596.55 on account of unpaid wages and interest. Wood’s award of \$1,421.00 reflects unpaid overtime pay while Rodrigues’ award of \$175.55 reflects unpaid vacation pay.

ISSUES TO BE DECIDED

The employer, by way of its letter to the Tribunal dated November 22nd, 1998 (appended to its notice of appeal) does not seek to overturn Rodrigues’ award. With respect to the Wood award, the reasons for appeal are particularized as follows:

- “It is over two years ago since this man (*i.e.*, Wood) worked for me”; and
- “Clint Wood was to operate my machine at \$23 per hour straight time...We did not try to lower the rate including overtime to equal that amount, \$23 straight time.”

I take it from the above that the employer asserts that Wood’s complaint was filed outside the statutory time-limit governing the filing of complaints or that Wood’s unpaid wage claim was otherwise statute-barred and that, in any event, by agreement, Wood was not entitled to receive overtime pay.

I should also add that the employer’s various written submissions to the Tribunal make reference to an unproven allegation that Wood stole certain goods from the employer. There is certainly no proof of this allegation before me--the RCMP refused to investigate the matter--and, in any event, this claim falls outside my statutory jurisdiction.

I will, however, deal with the two grounds of appeal set out above.

ANALYSIS

Although it is conceded by all parties that Wood’s employment with Uni-Prep ended on October 30th, 1996, the Determination was not issued until November 3rd, 1998. While there is a 6-month time limit provided for in section 74 of the *Act*, that time limit refers to the filing of a complaint.

Section 80 provides for a 24-month limitation in terms of the amount of unpaid wages that may be awarded by way of a Determination (dating back from the earlier of the date of termination or the date of complaint). Neither time limitation was breached in this case.

Wood's complaint to the Employment Standards Branch was filed on December 12th, 1996 well within the 6-month time limit set out in section 74. Further, by way of the Determination, Wood was awarded unpaid overtime wages earned during the period August 20th to October 30th, 1996 -well within the 24-month limitation set out in section 80(a) of the *Act*.

As for the alleged agreement whereby Wood agreed to be paid at \$23 per hour on a "straight-time" basis for all hours worked, the short answer to that submission is that even if there was such an agreement, that agreement amounts to an attempt to "contract out" of the *Act*, something that is prohibited by section 4 of the *Act*. Accordingly, there is no basis for setting aside Wood's overtime award (see also *Re Avondale and Associates*, B.C.E.S.T. Decision No. 532/97; *Re Prints-Charming*, B.C.E.S.T. Decision No. D534/97).

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$1,596.55** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal