

An appeal

- by -

Vibro-Tek Industries Inc.
("Vibro-Tek")

- 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.: 2002/632

DATE OF DECISION: February 12, 2003

DECISION

OVERVIEW

This is an appeal by Vibro-Tek Industries Inc. ("Vibro-Tek") under Section 112 of the Employment Standards Act (the "Act") of a Determination issued by a delegate of the Director of Employment Standards on November 27, 2002. The Determination requires Vibro-Tek to pay Trevor Simpson ("Simpson") \$16,950.26 representing unpaid wages, compensation for length of service and interest. Vibro-Tek argues that the delegate incorrectly calculated the amount of wages it owes to Simpson.

ISSUE TO BE DECIDED

Did the delegate err in determining that Simpson is owed \$16,950.26?

FACTS AND ANALYSIS

On November 27, 2002 the delegate issued a Determination against Vibro-Tek, which found that it owed Simpson wages in the amount of \$15,992.23, compensation for length of service in the amount of \$624.00 and interest in the amount of \$334.03 for a total of \$16,950.26.

Vibro-Tek filed an appeal of the Determination on December 19, 2002. It says it owes Simpson wages in the amount of \$12,192.23, which is \$3,800.00 less than the amount calculated by the delegate.

The delegate and Simpson were invited to reply to the appeal. Only the delegate replied. In his submission dated December 30, 2002 the delegate says he agrees that the quantum shown in the Determination is incorrect. He says his calculation fails to account for \$3,800.00 in wages that the parties agreed was paid to Simpson. He points to a document signed by Vibro-Tek and Simpson which indicates they agree that Simpson received \$3,800.00 in wages and this amount should be deducted from his earnings of \$15,992.23. The delegate's revised calculations show Simpson is owed a total of \$13,073.87 representing unpaid wages in the amount of \$12,192.23, compensation for length of service in the amount of \$624.00 and interest in the amount of \$257.64. The delegate further said that he had spoken with Simpson about the matter and Simpson agreed that the calculations should be amended to show he is owed \$13,073.87.

The parties were given an opportunity to reply to the delegate's submission. The Tribunal received no replies.

I have reviewed the file and I accept that the Determination should be varied. The parties agree that Simpson received \$3,800.00 and this amount should be deducted from the amount listed on the Determination. I further accept that the delegate's revised calculations, after the deduction, are accurate.

ORDER

I order, under Section 115 of the Act, that the Determination dated November 27, 2002 be varied to show that Vibro-Tek owes Simpson \$13,073.87.

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Norma Edelman
Vice-Chair
Employment Standards Tribunal