

An appeal

- by -

Kenny Sekhon Contracting Ltd.
("Sekhon")

- 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: Carol L. Roberts

FILE No.: 2001/779

DATE OF HEARING: January 23, 2002

DATE OF DECISION: January 30, 2002

DECISION

APPEARANCES:

On behalf of Kenny Sekhon Contracting Ltd.	Ronnie Gill, LRS Solutions
On his own behalf:	S. Gill

OVERVIEW

This is an appeal by Kenny Sekhon Contracting Ltd. ("Sekhon"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination issued by the Director of Employment Standards ("the Director") on June 22, 2001. The Director determined that Sekhon failed to pay Sukhpinder Gill overtime wages, statutory holiday pay and vacation pay, and ordered that Sekhon pay the Director \$3,762.31 on Gill's behalf.

ISSUES TO BE DECIDED

The issue on appeal is whether the Director's delegate erred in determining the amount owed to Mr. Gill. Although Sekhon concedes it owes Mr. Gill wages, it contends that the correct amount owed is \$833.93.

FACTS

Mr. Gill was employed by Sekhon, which operates a gravel truck business, as a driver from June 13, 2000 to September 1, 2000. His rate of pay varied according to the axel count of the truck.

After an investigation into Mr. Gill's complaint, the delegate concluded that Mr. Gill was owed wages for June, July, August and September in the amount of \$12, 503.94, and was paid \$8,947.56, according to the T-4 issued by Sekhon. Wages owing were determined to be \$3,556.38.

ARGUMENT

Sekhon argues that the delegate failed to consider a cash payment of \$2,000.00 made to Mr. Gill in June, and erred in the calculation of hours worked in August and September. Sekhon acknowledged that Mr. Gill was not paid for overtime, but was paid statutory holiday pay. It accepts the delegate's calculations for June and July. It says that he was paid statutory holiday pay in August, and argues that the correct amount owed to Mr. Gill is \$272.51, not \$432.48, for a difference of \$159.97.

Sekhon further argues that Mr. Gill was paid for the one day he worked in September. It contends that he should be paid only for that 8 hours.

Sekhon provided the Tribunal with copies of cleared cheques, Mr. Gill's timesheet, and an amended T-4 in support of the appeal. It argues, based on this evidence, that it is apparent that factual errors were made, leading to an incorrect Determination.

While the delegate submits that evidence provided to the Tribunal was not presented to her during the investigation, in light of Mr. Gill's acknowledgement that he is only owed \$912.18, she suggests that the submissions of both of the parties should be considered by the Tribunal.

Mr. Gill made no submissions at the hearing, but did not concede that he was owed \$833.93.

ANALYSIS

Although the Tribunal does not normally allow new evidence on appeal, in light of the delegate's submissions, and Mr. Gill's acknowledgement that the Determination is in error, I find it appropriate to admit Sekhon's documents.

Having reviewed that evidence, including the receipt signed by Mr. Gill that he was paid \$2000.00 cash on June 30, 2000, I find that the Determination was in error in calculating the amount owing to Mr. Gill. In light of all of the evidence, I accept Sekhon's calculations as being the most accurate, and allow the appeal.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination, dated June 22, 2001 be varied to reflect that the amount owing to Mr. Gill is \$833.93. The amount owing must be paid together with such interest as may have accrued, pursuant to Section 88 of the Act, since the date of issuance.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal