

**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 -

British Square Developments Ltd. operating as Polar Bear Painting  
(the “Appellant”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NOS.:** 98/779

**DATE OF DECISION:** February 17, 1999

## DECISION

### OVERVIEW

British Square Developments Ltd. operating as Polar Bear Painting (the “employer”, also the “Appellant”) appeals, pursuant to section 112 of the *Employment Standards Act* (the “Act”), a Determination by a delegate of the Director of Employment Standards dated November 17, 1998. The employer is found to have contravened sections 17, 18, 40, 45 and 58 of the *Act* in a Determination which awards Frederic V. St. Laurent \$494.03 in wages and interest and Gregg Peter Diachok \$1,459.26 in wages and interest.

### ISSUES TO BE DECIDED

On appeal, the employer asks that the Tribunal consider two points. First, according to the employer, there was an understanding that pay included vacation pay. Second, in specific regard to the Complaint by St. Laurent, the employer claims that the employee wanted to earn additional pay and that he agreed to work overtime at straight-time wages in exchange for the extra work.

### FACTS

On behalf of the employer, John Lovelace claims that the arrangement on pay was that “salaries ... include payment of 4% vacation pay”. He says that was known by all employees and accepted by them. On that point, Lovelace indicated, on filing his appeal, that he had records, written policies and correspondence to prove his allegations, and that he would send that information to the Tribunal. It was never received.

Nothing establishes that St. Laurent agreed to work overtime for straight-time pay.

### ANALYSIS

If there is any record that indicates that the employees had accepted that pay was not just regular wages but included vacation pay, it is not shown to me.

If the employees were paid regular wages and whatever vacation pay was earned in a pay period, there should be a record of that. Section 27 of the *Act* requires that an employer provide each employee with a clear written statement of what is paid in regular wages, overtime wages, and other payments, and also whatever deductions there are. That section of the *Act* is as follows:

27 (1) *On every payday, an employer must give each employee a written wage*

*statement for the pay period stating all of the following:*

- (a) the employer's name and address;*
- (b) the hours worked by the employee;*
- (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;*
- (d) the employee's overtime wage rate;*
- (e) the hours worked by the employee at the overtime wage rate;*
- (f) any money, allowance or **other payment the employee is entitled to;***
- (g) the amount of each deduction from the employee's wages and the purpose of each deduction;*
- (h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for;*
- (i) the employee's gross and net wages;*
- (j) how much money the employee has taken from the employee's time bank and how much remains. (my emphasis)*

Vacation pay falls into the category of "other payment the employee is entitled to". As matters are presented to me, I find that the employer not only fails to submit evidence to show that there was an understanding or agreement that pay included regular wages and vacation pay, but fails to show even that the employees were told that vacation pay was being paid with each pay cheque. In regard to the matter of vacation pay, there is nothing to establish that the Determination is in any way wrong.

The employer also alleges that St. Laurent agreed to work overtime for straight-time wages. The employee's Complaint is to the contrary. But even if St. Laurent had agreed to work overtime at straight-time wages, that agreement has neither force nor effect. Section 4 of the *Act* establishes that the provisions of the *Act* are **minimum standards**.

*4 The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.*

Sections 43, 49, 61 and 69 apply to employees covered by collective agreements and are of no importance to this case. St. Laurent is entitled to overtime wages as set out in the *Act*.

In conclusion, the employer claims that the employees knew and accepted that they would be paid regular wages and vacation pay with each pay cheque but it fails to provide support for its allegation. The employer also claims that St. Laurent agreed to work

overtime for straight-time wages but I find that, even if such an agreement exists, it is without force and effect: The employee is entitled to overtime pay as set out in the Determination.

**ORDERS**

I order, pursuant to section 115 of the *Act*, that the Determination dated November 17, 1998 be confirmed. I order British Square Developments Ltd. operating as Polar Bear Painting to pay Gregg Peter Diachok \$1,459.26 in wages and interest, together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the Determination's date of issuance. I order British Square Developments Ltd. operating as Polar Bear Painting to pay Frederic V. St. Laurent \$494.03 in wages and interest, together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the Determination's date of issuance.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**