

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 -

Linda Wright
("Wright")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: James Wolfgang

FILE NO.: 95/015

HEARING DATE: April 15, 1996

DATE OF DECISION: May 3, 1996

ISSUE TO BE DECIDED

What is the appropriate amount that Fort and Reeves should receive for work performed at Advanced Carpet Cleaning?

ARGUMENT

The employer argues that Fort and Reeves could not have worked on the shifts they claimed as the company only has five telephone lines available for this work and the shift schedule show all five positions were filled by other employees. Further, each employee posts their hours and number of sales on a standard form on the wall and the supervisor (Megan) would then add the number of cancellations and from that Wright would prepare the payroll. Neither Fort nor Reeves names appear on the times in dispute.

The employees were paid in cash by sealed envelope and signed to confirm they had received their pay. Wright indicated she had not had trouble with this system until this incident.

Megan is no longer employed by the company and, apparently, is unavailable.

The complainants' evidence indicated they had been told by Megan that the first shift they worked was a "training shift" for which they would not be paid. They also told the hearing that on the evening shift there were six phones available as the regular office was closed and the incoming line was available for outgoing calls.

It was claimed that on September 20 the office was closed early and the staff sent home by Megan. The payroll records for Fort and Reeves indicated they were "late" reporting for work rather than being sent home early.

On September 26, when Fort reported for work the office was closed and she went home. She was paid for September 26 but not paid for September 27 and 28 which she claims she worked.

Reeves claims she was paid for September 21, which she did not work, and not paid for September 28 and October 2 which she claims she worked.

The work records produced by Wright are not the ones that were posted on the wall in the office according to both Fort and Reeves.

ANALYSIS

The original work records were not provided by the employer and they are apparently not available. It appears Megan took the original records and created new ones which were supplied to Wright to prepare the payroll. It is not possible to rely on the evidence supplied by the employer to determine which days were worked or whether the person worked the morning or afternoon shift.

In the absence of proper records from the employer we must rely on the evidence of Fort and Reeves in respect to the times they worked as they had kept daily personal records of their days and hours.

ORDER

Except for the issue of a “training shift”, the major problem appears to be caused by the system used to record the hours, sales and cancellations.

It is my opinion, on the balance of probability, that the hours claimed by Fort and Reeves were the hours worked and I award accordingly.

In summary, I order Section 115 of the *Act*, the Determination CDET #000097 be varied as follows:

In the case of Fort:

| | | |
|--------------|----------------|-----------------|
| September 14 | 4 hours | |
| 18 | 4 hours | |
| 19 | 4 hours | |
| 20 | 4 hours | (was 3) |
| 21 | 4 hours | |
| 25 | 4 hours | |
| 26 | 2 hours | (office locked) |
| 27 | 4 hours | |
| 28 | <u>4 hours</u> | |
| Total | 34 hours | |

| | |
|-----------------------------|-----------------|
| 34 hours @ \$6.50 per hours | \$221.00 |
| Vacation pay | <u>8.84</u> |
| Total amount | \$229.84 |

In the case of Reeves:

| | | | |
|-----------|----|----------------|---------|
| September | 14 | 4 hours | |
| | 18 | 4 hours | |
| | 20 | 4 hours | (was 3) |
| | 28 | 4 hours | |
| October | 02 | <u>4 hours</u> | |
| Total | | 20 hours | |

| | |
|----------------------------|-----------------|
| 16 hours @ \$6.50 per hour | \$104.00 |
| 4 hours @ \$7.00 per hour | 28.00 |
| Vacation pay | <u>5.28</u> |
| Total amount | \$137.28 |

In addition, as no monies had been paid for work performed, I award interest on the above amounts as per Section 88 of the *Act*.

“James Wolfgang”
James Wolfgang
Adjudicator
Employment Standards Tribunal

:jel