

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 -

Senecio Decasa

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 98/721

DATE OF HEARING: February 5, 1999

DATE OF DECISION: February 11, 1999

DECISION

APPEARANCES

M. Morano	on behalf of Senecio Decasa
R. Nombrado	on behalf of Ray Nombrado operating as Sunray Building Maintenance (“Sunray”)

OVERVIEW

This is an appeal by Senecio Decasa, under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was made by a delegate of the Director of Employment Standards (the “Director”) on October 28, 1998. The Director determined that all wages owing to Mr. Decasa for the 2-year period May, 1996 to May, 1998 had been paid in full.

Mr. Decasa gave several grounds for his appeal in writing (“... denial of vacation, sick leave and other benefits, etc.”) but at the hearing, he submitted, there were two grounds for his appeal: unpaid vacation pay (in the amount of \$447.82) and an unspecified amount of unpaid overtime wages.

A hearing was held at the Tribunal’s offices on February 5, 1999 at which time evidence was given under oath.

ISSUE TO BE DECIDED

Did the Director err in determining that Mr. Decasa has been paid all wages to which he is entitled under the *Act*?

FACTS

Mr. Decasa was employed as a janitor by Sunray from 1989 or 1990 until May, 1998 when he retired. Shortly thereafter, he made a complaint under the *Act*, which was investigated by the Director. That investigation concluded with the issuance of a Determination dated October 28, 1998.

The Director determined that Mr. Decasa’s wage entitlements under the *Act* has been satisfied by his former employer, Sunray, on the basis of the following findings of fact:

I have reviewed the payroll records of the employer, copies of which have been sent to you. The records show that your gross wages for the period of May 1996 to May 1998 amount to \$19,269.00. Your vacation pay at 6% amounts to \$1,156.14. You have been paid a total of \$447.82 before the filing of the complaint leaving a balance of \$708.32 still owing to you. This amount has since been paid to you by the two cheques from the employer that I sent you (one for \$180.00 and the other for \$528.32). The records also show that you have been paid all statutory holiday pay for the two year period under investigation. There is no evidence of any overtime owing to you.

I am satisfied that all wages owing to you for the period under investigation have now been fully paid to you by the employer and nothing further is owing to you. As explained to you earlier, I cannot recover the wages owing, if any, for the period prior to May 1996.

Your complaint will now be closed on our file.

(reproduced as written)

Mr. Decasa testified at the hearing that he had not received vacation pay in the amount of \$447.82 although he acknowledged receipt of two cheques totaling \$708.32. Mr. Decasa also testified that he was paid semi-monthly (mid-monthly and month-end) and did not receive an additional payment for vacation pay in December each year. However, when asked to identify his signature as an endorsement on the reverse of three payroll cheques dated December, 1994 and three others dated December, 1991 he declined to answer questions put to him by Mr. Nombrado. Mr. Nombrado asserted that the cheques were issued as payments of vacation pay to Mr. Decasa: a practice which he had adopted each December during Mr. Decasa's employment.

ANALYSIS

It is trite law that as the appellant, Mr. Decasa bears the onus of establishing, on the balance of probabilities, that the Director erred in making the Determination. The process contemplated under Section 112 of the *Act* is an appeal process. It is not an opportunity to conduct another investigation. Mr. Decasa appears to hold the view that I should re-investigate his complaint.

I concur with the Director's view that Section 80 of the *Act* places a limit on the amount of wages that an employer may be required to pay. In this case, the amount of wages is limited to the 24 month period from May, 1996 to May, 1998 when Mr. Decasa retired (see: Section 80(a) of the *Act*).

When I consider both the oral and documentary evidence in this appeal I find that Mr. Decasa has not established that the Director erred in making the Determination which is

under appeal. As I explained at the hearing, if an appellant is to be successful on appeal, he or she must do more than simply assert that the Director made a factual error or an error in law. The minimal evidence that was adduced by Mr. Decasa is not sufficient to allow me to find, on the balance of probabilities, that the Director erred in making the Determination.

ORDER

I order that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

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