

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of two appeals pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Silvco Linen Services Ltd.
("Silvco")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NOS.: 1999/622 & 1999/623

DATE OF HEARING: January 21, 1999

DATE OF DECISION: February 16, 1999

DECISION

OVERVIEW

Silvco Linen Services Ltd. (“Silvco”, also, “the employer”) has appealed two Determinations by a delegate of the Director of Employment Standards (the “Director”). The appeals are pursuant to section 112 of the *Employment Standards Act* (the “Act”).

One of the Determinations orders Silvco to pay Rita Wai Han Mok \$2,250.79 in wages and interest. The Determination (the “Mok Determination”) is dated September 23, 1999.

The second Determination orders Silvco to pay Helen Guemo \$2,715.01 in wages and \$48.70 in interest. The “Guemo Determination” is dated September 24, 1999.

Silvco, on appeal, agrees that Mok and Guemo are owed regular wages of \$1,222.53 and \$792.87, respectively. It does not argue that it does not owe vacation pay. What Silvco argues is that the delegate is wrong on the number of hours worked by each of the employees and wrong on what has already been paid.

APPEARANCES

Greg Johnson	General Manager of Silvco
Rita Mok	On her own behalf
Julie Koo	Interpreter for Mok
Helen Guemo	On her own behalf

ISSUES TO BE DECIDED

What I must decide in this case is the matter of whether the employer does or does not show that either of the two Determinations ought to be varied or cancelled for reason of an error in fact.

FACTS

Rita Mok worked for Silvco between November 18, 1998 to June 4, 1999.

Helen Guemo began working for Silvco on the 29th of December, 1998. Her last day was June 11, 1999.

In March of 1999, Silvco's laundry was damaged by fire. The employer was hard pressed for a way to keep its business going. It found that another laundry, the Ideal laundry company, was willing to rent the use of its facilities on an hourly basis. Ideal agreed to let Silvco use its laundry once Ideal was finished for the day. And that is how Silvco went about doing its laundry until such time as it was able to move into a Coquitlam facility.

At first, Silvco had all of its employees report for work at Ideal. Those that did sorting were told to report before the others. The sorting was done outside at Ideal. Mok and Guemo sometimes did sorting. If, on completing the sorting or on reporting for work, Ideal was not yet finished for the day, the employees had to wait for Ideal to finish. They were not allowed to leave Ideal for more than 15 minutes at a time.

Silvco later moved its sorting operation to Coquitlam. Both Mok and Guemo did some of that sorting. Once they were finished doing that sorting, the laundry was loaded on a truck and the employees were driven to Ideal. If Ideal was not yet finished for the day, they were then expected to wait for Ideal to finish. Again, they were told not to stray too far or leave for more than a few minutes. They could eat their lunch if they wished but as soon as Ideal was finished for the day, the employees had to start doing Silvco's laundry.

Silvco did not produce a record of hours worked by Mok and Guemo during the course of the delegate's investigation. Mok and Guemo kept separate records of the hours that they worked. Those records form the basis for the two Determinations.

The employer produces, on appeal, a hand-written record of hours worked. The record was apparently kept by a supervisor. The employer's record is not for the relevant period of each of the Determinations but covers only the period March 27th to May 3rd. It differs from the employees' records in that there are fewer hours of work. That is for the most part because the employer's record has both Mok and Guemo taking long breaks of an hour or more, as much as 2 ½ hours. On hearing from the parties, I find that the breaks are for what the employer deems to be breaks taken while the employees were travelling, waiting for rides or waiting for Ideal to finish. Once the employees began doing laundry, there were no breaks. Silvco expected them to do the laundry as quickly as possible as it was renting the Ideal laundry by the hour.

The Determinations award Mok and Guemo regular wages for work between March 29, 1999 and the last day of work for each person. The delegate accepts that the employee's were paid all regular wages due to the 28th of March.

According to the employer's records, Mok was paid \$3,492.63 for work after March 28, 1999. I, like the delegate, find that it paid only \$1,700. Silvco has only produced cancelled paycheques for that amount [paycheque no. 7439 for \$700 (\$556.41 net), cheque no. 7445 which is for \$500 and cheque no. 7452 which is for \$500]. I also find that while the employer claims to have sent Revenue Canada another \$218.01 on behalf of the employee, it fails to present me with any evidence of that.

The employer's record of payments to Guemo has her being paid \$3,936.39 after the 28th of March, 1999. The Determination has her being paid \$1,700. I find that she was in fact paid \$2,200. Cancelled paycheques, cashed at the financial institutions at which Guemo did her banking, show that paycheque no. 7440 for \$700 (\$556.41 net), cheque no. 7446 for \$500, cheque no. 7454 for \$500 and cheque no. 7452 for \$500]. The employer claims that it in Guemo's case paid income tax and other Revenue Canada payments but it fails to show that as well.

ANALYSIS

The Determinations are based on records of hours worked which were kept by the employees. The employer's appeal is that the records are incorrect in that each overstates the number of hours worked but that has not been shown to me. Silvco has not shown me that there is anything at all wrong with the employee records.

It may have been rather difficult for the employer to keep proper records for reason of the fire and the move to using Ideal's facilities but the records that it has shown me are substandard and not what is required by the *Act*. The employer's record of what was paid is just plain wrong. Its hand-written record of hours worked is not easily understood or followed. And it is, above all else, inaccurate in that it fails to account for work. The work day began at such time as the employees were told to report for work. The time that they spent waiting for rides, travelling from Coquitlam to Ideal and waiting for Ideal to finish is time for which they are entitled to be paid. Even though they were allowed to eat their lunch, they were not in such periods free to come and go as they pleased. They were required to stand ready for Ideal to finish and an immediate start on Silvco's laundry.

I have not been shown that the employees' records are deficient in any way and/or that the employer's record is to be preferred for any reason. Silvco has failed to show that either of the Determinations are wrong on the extent of work.

There is only one error as matters are presented to me and that is in respect to the Guemo Determination. The delegate's calculations list the amount paid after March 28, 1999 as \$1,700. I have found that in fact Guemo was paid \$2,200. The Guemo Determination must be varied so that it reflects that fact. The amount of total wages must be reduced by \$500 and the amount of interest recalculated. Guemo is entitled to interest to the date of this decision, however, not the Determination.

ORDER

I order, pursuant to section 115 of the *Act*, that the Mok Determination dated September 23, 1999 be confirmed in the amount of \$2,250.79 and to that amount I add whatever further interest has accrued pursuant to section 88 of the *Act*.

I order, pursuant to section 115 of the *Act*, that the Guemo Determination dated September 24, 1999 be varied. Guemo is not owed \$2,715.01 in wages but \$2,215.01. Silvco is ordered to pay her that latter amount plus interest as provided by section 88 of the *Act*, to the date of this decision.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal