

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Wigmar Construction (B.C.) Ltd.
(" Wigmar ")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 96/140

DATE OF DECISION: May 3, 2001

DECISION

OVERVIEW

This is an appeal by Wigmar pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. CDET 000981 issued by the Director on February 1, 1996. In this appeal Wigmar claims that the Director erred in the reasons for the Determination and that no violation took place.

I have completed my review of the written submissions made by Wigmar and the information provided by the Director.

FACTS

Dustin Thomas Ellis (“Ellis”) was employed by Wigmar from July 4, 1995 to October 12, 1995.

Ellis worked on the Edward Milne Community School project, a Fair Wage project tendered by School District No. 62 (Sooke).

Ellis was paid wages as an apprentice carpenter, \$11.86 per hour comprised of 50% of a journeyman carpenter rate plus \$1.05 per hour for first aid work.

Ellis was not a registered carpenter apprentice during his period of employment with Wigmar.

Ellis filed a complaint with the Employment Standards Branch (“Branch”) on October 30, 1995 alleging that he was not paid wages in accordance with the *Skills Development and Fair Wage Act*.

The Director investigated Ellis’ complaint and, subsequently, Determination # CDET 000981 was issued.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether or not Ellis was a registered carpenter apprentice during his employment with Wigmar..

ARGUMENTS

Wigmar argues that:

- Ellis was hired as a carpenter apprentice and part-time first aid attendant
- there was another first aid attendant on the job site to share duties with Ellis
- their understanding was that if the individual was a registered apprentice, then the existing apprentice wage rate applied
- they requested the Apprenticeship Branch transfer Ellis' apprenticeship to I.C.B.A.
- they were making arrangements to register all apprentices on the job site and if Ellis had remained employed he would have been registered as well
- Ellis made no mention of his concerns regarding his wage rate until after he was dismissed

The Director contends that:

- while Ellis was a registered carpenter apprentice effective June 20, 1994 with his former employer, W.R. Knight Contracting Ltd., that apprenticeship was terminated at the request of that employer on June 23, 1995
- Ellis was therefore not a registered carpenter apprentice while employed with Wigmar
- Ellis was the first aid attendant on the job site and should have been paid the first aid attendant rate set forth in the *Skills Development and Fair Wage Act*

ANALYSIS

The *Skills Development and Fair Wage Act* section 4 (1) sets forth the requirements for the trade qualifications for employees. Section 4(1) (a) (b) states:

“Subject to subsection (2), all employees of the contractor, subcontractor or any other person doing or contracting to do the whole or any part of the construction to which this *Act* applies must

- (a) be registered under the *Apprenticeship Act*,
- (b) hold a British Columbia certificate of apprenticeship,”

I conclude therefore, based on the evidence provided that Ellis was not a registered apprentice while employed with Wigmar.

The *Skills Development and Fair Wage Act* section 5 states:

“All employees of a contractor, subcontractor or any other person doing or contracting to do the whole or any part of the construction to which this *Act* applies must be paid fair wages in accordance with the regulations.”

If Ellis was not a registered apprentice, I must conclude based on the evidence provided, that he was a first aid attendant and should have received wages as a first aid attendant as set forth in the Skills Development and Fair Wage Regulation. The wage rate for a first aid attendant was \$20.90 per hour plus \$4.00 per hour minimum benefits.

The evidence provided indicates that Ellis did receive the \$4.00 per hour benefits as set forth in the Skills Development and Fair Wage Regulations, therefore he is owed the difference in wages between the first aid attendant rate and the rate paid for all hours worked. I am satisfied that the calculations performed by the delegate of the Director and set forth on the Determination are correct.

The Skills Development and Fair Wage *Act*, Section 8 is the provisions which stipulates that fair wages deemed to be owing are considered as wages under this *Act*. Section 8 states:

Collection of fair wages

Fair wages owing under this *Act* are deemed to be wages for the purpose of the Employment Standards *Act*, and the collection, review and appeal procedures of that *Act* apply for the purpose of this *Act*.

ORDER

Pursuant to Section 115 of *Act*, I order that Determination No. CDET 000981 be confirmed in the amount of \$3,242.18

“Hans Suhr”

Hans Suhr
Adjudicator
Employment Standards Tribunal

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