



An appeal

- by -

48252 B.C. Ltd., operating as the Race Trac Gas

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

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

ADJUDICATOR: M. Gwendolynne Taylor

FILE No.: 2000/678

DATE OF DECISION: February 13, 2001

DECISION

APPEARANCES:

Written submissions by:

A. Terry Fortner	on behalf of the Appellant/employer
Karin Doucette	on behalf of the Director

OVERVIEW

Veronica Saul (“respondent”) worked as a cashier at the Appellant’s gas station from May 2 to October 31, 1999. She brought a complaint to the Director under the Employment Standards Act alleging that the Appellant owed her for statutory holiday pay, minimum daily pay and compensation for length of service (CLOS) pay.

The Director found that the Appellant owed Saul a total of \$523.01, including applicable interest. This amount consisted of \$262.23 for CLOS and \$238.41 for

outstanding wages, including minimum daily hour (section 34) and overtime (section 40); statutory holiday pay (section 46); and annual vacation pay.

Attached to the Director’s determination is attachment 1 showing the wage calculation summary. In this document, the Director shows that the respondent earned \$4,667.97, plus \$36.23 statutory holiday pay and \$188.17 vacation pay, for a total owing of \$4,892.17. The document shows the amount actually paid as \$4,653.96, for a difference of \$238.41.

The Appellant appealed the determination on the basis that vacation pay in the amount of \$181.41 had been paid. Accordingly, the appellant submitted that the amount owed should be reduced by \$181.41.

ISSUE

The sole issue is the correct calculation of wages owed and wages paid, including vacation pay.

THE FACTS AND ANALYSIS

Attached to the appellant’s submission dated November 23, 2000 are copies of pay stubs. From these stubs, the wages paid total \$4,732.03. Until this submission, the Director was assuming that the wages paid totalled \$4,653.96, the amount shown on the separation certificate. The difference, \$78.07, is the amount of the last pay cheque.

Although the appellant has characterized the dispute as the amount paid for vacation pay, that is not in fact where the difference lies. The difference is in the total amount calculated as wages owed, less the wages paid. It is apparent that some of the difference arises from the calculations for wages earned for minimum daily hours, overtime, and statutory holiday. The calculation of annual vacation pay is based on the wages earned and, therefore, will increase if the wage calculation increases, as it did in this case.

I accept the calculations in attachment 1, that wages earned totalled \$4,467.97, plus \$36.23 statutory holiday pay, plus \$188.17 vacation pay, for total owing of \$4,892.37. I also accept that the wages paid totalled \$4,732.03, as per the appellant's November 23 submission. The difference is \$160.34.

The appellant did not take issue with the calculation of the CLOS. I accept the Director's calculation of \$262.23. Accordingly, the total amount owed by the appellant to the respondent is \$262.23 plus \$160.34, \$422.57, plus applicable interest under section 88 of the *Act*.

ORDER

Pursuant to section 115(1) of the *Act*, I vary the determination and order that the respondent is entitled to recover from the appellant the amount of \$422.57, as set out above, plus applicable interest under section 88.

M. Gwendolynne Taylor
M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal