

An appeal

- by -

Janice Brunner

- 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: Norma Edelman

FILE No.: 2001/876

DATE OF DECISION: February 11, 2002

DECISION

ANALYSIS

This Decision concerns the calculation of the amount of wages owed by N. L. Poulin Ltd. operating as Poulin's Exterminators ("Poulin") to Janice Brunner ("Brunner").

On October 22, 2001, the Tribunal issued Decision BCEST #D565/01, which allowed Brunner's appeal that she normally worked a 35 hour week. The Adjudicator referred the Determination back to the delegate of the Director of Employment Standards to recalculate the amount of overtime wages owed to Brunner based on a 35-hour workweek.

On December 13, 2001, the Tribunal received a report from the delegate in which he found that Brunner was owed \$15,426. 73.

In a letter dated December 27, 2001, the Tribunal invited the other parties to reply to the delegate's submission. Only Poulin replied and it stated as follows:

We disagree with the calculations regarding the amount of overtime for two reasons because there is an error in fact as per the following:

1. Janice Brunner did not have regular hours
2. After the determination we did an in, out comparison of the hours she claimed to the security alarm and found she had claimed an excess of 153.29 overtime hours. This information and all back was supplied to your Mr. Jim McPherson.

In its reply Poulin disputes Brunner's hours of work and says she did not work regular hours. The Tribunal, however, has already decided those issues in Decision BCEST #D565/01. The Tribunal decided that Brunner normally worked a 35-hour workweek and it directed the delegate to redo his calculations using a regular wage based on a 35-hour workweek. There was no dispute regarding the amount of hours that Brunner worked in each weekly period of time. The only issue before the Tribunal at this time is the calculation of the amount of overtime owed to Brunner using a) an hourly rate of pay based on 35 hours being a normal workweek and b) the actual hours worked by Brunner as set out in the Determination. In that regard, I have reviewed the calculations made by the delegate and I find no basis to alter his conclusion regarding the amount of wages owed to Brunner.

ORDER

Pursuant to Section 115 of the Act and further to Tribunal Decision BCEST #D565/01 I order that the Determination dated July 10, 2001 be varied to show that Poulin owes Brunner \$15,426.73 plus any further interest accumulated pursuant to Section 88 of the Act.

Norma Edelman
Adjudicator
Employment Standards Tribunal