

**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-

Kanaka Ridge Steel Erecting Ltd.

(“Kanaka”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/828

**DATE OF DECISION:** February 19th, 1998

## DECISION

### OVERVIEW

This is an appeal brought by Kanaka Ridge Steel Erecting Ltd. (“Kanaka”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on October 23rd, 1997 under file number 086298 (the “Determination”). The Director determined that Kanaka owed a of \$21,359.57 on account of unpaid “benefits” owed to approximately 30 employees by reason of the *Skills Development and Fair Wage Act* (“SDFWA”) and the accompanying *Skills Development and Fair Wage Regulation* (“SDFWR”).

### ISSUE TO BE DECIDED

Kanaka’s appeal is predicated on the simple assertion that the company did, in fact, pay the monies due to the employees in question.

Kanaka’s stated reason for the appeal is that: “The wages paid where [sic] higher than stated in the guide, Plus there was 6% holiday pay on top of wages”. I am also advised by Kanaka’s representative, Betty White (who filed Kanaka’s appeal--her status with the company is not set out) that: “[Kanaka] has not been in operation since Sept. 15/97 at which time Revenue Canada held out bank account and virtually [sic] put the Company out of business”.

### FACTS

The undisputed evidence before me is that Kanaka was a subcontractor on a site, known as the “Garry Street School” site (School District No. 38), where the provisions of both the *SDFWA* and *SDFWR* applied. Kanaka was a subcontractor on the site during the period October 1996 to June 1997. Accordingly, Kanaka’s employees, all ironworkers, were entitled to be paid a *minimum* hourly rate of \$22.90 plus a further \$4.00 per hour on account of “benefits” (see *SDFWR*, Schedule 3).

The Director’s delegate, after reviewing Kanaka’s payroll records, determined that Kanaka did not pay the \$4.00 per hour “benefits” to each of the employees in question.

As noted above, Kanaka says that it did pay each employee the wages to which he was entitled under the *SDFWR*.

### ANALYSIS

I note that Kanaka has not submitted any payroll or other records to corroborate its assertion that it has paid its employees \$4.00 per hour on account of “benefits” as provided by the *SDFWR*. Indeed, the Kanaka records that were submitted to the Tribunal clearly show that the employees in question were *not paid* the \$4.00 per hour “benefits”. Although, in a number of cases, employees appear to have received an hourly rate in excess of the regulatory minimum (*e.g.*, \$25.02 or \$27.52) there is nothing in the material before me to show that *any* employee received the additional \$4.00 per hour on account of benefits. Indeed, in some cases, it would appear that the employees did not even receive the regulatory minimum hourly wage (excluding benefits) for ironworkers although these particular employees--who were paid a base hourly wage of \$20--may have been paid as general labourers even though they were listed on Kanaka’s books as “ironworkers”.

Kanaka’s failure to record, in its payroll records, the payment of benefits at \$4.00 per hour was noted by the Director’s delegate in his submission to the Tribunal dated December 12th, 1997. Kanaka has not responded to this latter submission, although Kanaka was provided with a copy of the submission and a written request (in a letter dated December 16th, 1997 from the Tribunal Registrar) for a reply to be filed with the Tribunal on or before December 30th, 1997.

Section 9(1)(c) of the *SDFWA* mandates the employer to maintain payroll records that set out the wages *and benefits* paid to an employee. Similarly, section 9(2) of the *SDFWA* provides that each payday, an employee is entitled to receive a wage statement setting out the wages *and benefits* being paid to the employee for that particular pay period. Kanaka has apparently failed to meet its statutory obligations in these two particular respects.

There being absolutely no evidence before me upon which I could reasonably conclude that the Determination is in error, the Determination must be confirmed and I hereby do so.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination issued in this matter be confirmed as issued in the amount of **\$21,359.57** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**