

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

- by -

Parmar Excavating Ltd.
("Parmar")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Barry Goff

FILE NO: 96/560

DATE OF DECISION: February 17, 1997

DECISION

OVERVIEW

This is an appeal by Parmar Excavating Ltd. ("Parmar") pursuant to Section 112 of the *Employment Standards Act* (the "Act") from Determination No. CDET 003900 issued by a delegate of the Director of Employment Standards on September 6, 1996. The Director found Parmar had failed to pay regular wages, overtime and vacation pay pursuant to Section 18(A) of the *Act* to Balbir Bains, Achhar S. Deol, Charanjit Singh Dhami, Antar S. Ghag and Jatinder S. Singh. The determination found Parmar owing \$43,192.06.

I have completed my review of Parmar's appeal along with the information provided the tribunal by the Director's delegate and have decided to confirm the determination.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Parmar owes wages, overtime and vacation pay to its former employees as listed above.

FACTS

The Reason Schedule attached to the Determination shows the Director's delegate commenced with a demand for payroll records which Parmar did not respond to. Subsequently a determination was issued against Parmar imposing a penalty of \$500.00 for failure to produce payroll records. Parmar appealed that decision but the Determination was upheld. (see *BC EST #D223/96*)

Parmar eventually provided some incomplete payroll records to the Director's delegate after a second demand was issued. The Complainants did not agree with the periods of employment or the wage rates which were set out in the payroll records supplied by Parmar. Parmar claimed it owed Deol \$127.00; Bains \$320.00; and Ghag \$347.00. Parmar claimed that no wages were owing to Dhami and Singh.

The Complainants provided their payroll records to the Director's delegate. The position of the Complainants was verified by translator, Mr. Deljit Deol, son of one of the Complainants, Achhar Deol. All of the Complainants support each other's claims for hours worked according to Deol.

The Director's delegate states in the Reason schedule:

"The preponderance of evidence supports the Complainants. All dispute the employer's payroll records which, if genuine, should have been produced at the first settlement conference. I reject these records as inaccurate. The Complainants' records are to be preferred.

In his reasons for appealing the penalty determination the employer stated, "Two of the complainants have settled for now and do not know the others' whereabouts and they never produced their SIN or their addresses". In fact, none of the complainants confirmed any kind of settlement. In not keeping a record of his employees' addresses as required by Section 28(1)(a) of the *Employment Standards Act* the employer shows again that his payroll records are not to be relied upon.

The employer's offer to settle three complaints, Deol, Bains and Ghag, consists of preparing cheques totalling \$794.00 for all. No offer was made to Dhami who attached a copy of an NSF cheque for \$500.00 to his complaint, nor to Singh who had attached a similar document for \$1,500.00 to his complaint form."

The Director's delegate advised Parmar by letter on September 6, 1996 that its settlement offers had been rejected and issued the Determination for wages owing. Parmar's appeal consists of a handwritten letter from Mr. Jaswant S. Sandhu which is set out below.

"To Whom It may concern,

Please note that I, Jaswant S. Sandhu of Burnaby, B.C. was builder of Lot #5, 13, 2 and 1, a Sunrise Nanaimo contract of excavating and drain tiles to Parmar Excavating Ltd. They started work on Nov. 28 and finished on Dec. 24, 95. Due to bad weather for many days work was stopped. I could not do more than 4 hours or many days off. During their period of work I supplied lodging and food for Mr. Parmar and others. Excavating and draintile work was done by Mr. Parmar himself. However to assist him I supplied him two labourers ie. Mr. Balbir S. Bains and Avtar S. Ghag. Their job was just general help & they also performed some work for me i.e. stripping lumber from foundations of cement wall which I have paid them ie \$500 each. Mr. Parmar also paid them cash ie. That is \$245.00 to Avtar Ghag and \$350.00 to Balbir S. Bains. Please, further note that I also paid to Mr. Charanjit S. Dhani \$3,500.00 on Nov. 28, 95 on behalf of Parmar Excavating Ltd. Money was transferred to his account at Khasa Credit Union at Scott Road. And on Jan. 25, 96 I paid him \$500 more by cheque #124 on behalf of Parmar Excavating Ltd.

Further during period of Nov 28, to Dec. 24, 95 I have not seen Mr. Jatinder Singh anywhere at my job site performing any job.

Added I am very surperised [sic] to find the amts claimed by Mr. Balbir S. Bains and Avtar S. Ghag and Charanjit S. Dhami and Jatinder Singh.

Signed"

In addition to the foregoing letter Parmar provides only the following on the appeal form provided by the tribunal.

"There are some facts to be explained by me which were not listed before."

ANALYSIS

The onus is on the appellant to provide evidence that the determination is in error. Parmar's entire appeal consists of the one letter from Sandhu set out above in its entirety. The contents of the Sandhu letter tend to support the position of the Claimants rather than Parmar. The Sandhu letter confirms that cheques were issued to some of the Complainants and the amounts listed are similar to or the same as those claimed by the Complainants. Copies of several cheques are contained on file but all were returned to the Complainants by the banks or credit unions concerned because there were not sufficient funds to cover any of them. The Sandhu letter also confirms the duration of the job which corresponds with the period of employment claimed by all the Complainants. The appeal did not include receipts of any kind to show cash payments or cancelled cheques to support the claim that wages had been paid by Parmar and actually received by any of the Complainants.

In short, Parmar has provided nothing in its appeal which gives cause to alter the determination order.

ORDER

I order pursuant to Section 115 of the Act that Determination No. DET003900 be confirmed.

Barry Goff
Adjudicator
Employment Standards Tribunal