

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, c.38

- by -

Drew Lydiard
operating Partacor Systems Ltd.
(the "Lydiard")

Of a Determination issued by

THE DIRECTOR OF EMPLOYMENT STANDARDS
(the "Director")

ADJUDICATOR: Jerry W. Brown

DATE OF DECISION: May 1, 1996

FILE NO: 96/095

DECISION

OVERVIEW

This is an appeal brought by Drew Lydiard operating Partacor Systems Ltd. ("Lydiard") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from Determination #CDET 000633 issued by the Director of Employment Standards (the "Director") on January 4, 1996. The Director determined that Lydiard owed James Herd ("Herd") \$7,952.46 for wages owed, vacation pay entitlement and severance pay in lieu of notice. In the form used for Appeal of Director's Determination under reasons for appeal, Lydiard appears to claim that certain cheques have been used to pay the wages owed. He also indicates that Herd appears to have taken four weeks and four days in 1994 which is apparently meant to balance out the Determination. Lydiard also claims that no severance pay is owed as there were conversations with Herd saying that Lydiard could not afford to keep him on staff.

FACTS

Herd was employed by Lydiard beginning in September of 1989 and his employment was terminated on December 22, 1994. At the time of termination Herd's wage rate was \$1,414.40 bi-weekly. Up to the Determination, Lydiard's position was that there was no dispute as to the wages owed, but that he was not in a position to pay these wages owed. With respect to vacation pay, Lydiard indicates that he recalls Herd taking vacation but the payroll records do not confirm or show vacation periods. With respect to compensation for length of service, both parties confirm discussions about business being slow and do not say there was written notice given.

ISSUES TO BE DECIDED

1. Whether there are wages owed to Herd for the period set out in the Determination;
2. Whether there is vacation pay owed as set out in the Determination;
3. Whether there is severance pay due in lieu of notice as set out in the Determination.

ARGUMENTS

Lydiard, in his Appeal form, appears to be claiming that wages have been paid, that vacation pay is not owed and that there is no money owed for compensation resulting from length of service as he gave plenty of notice from discussions with Herd that business was slow.

Herd's position is that the Director's Determination is correct.

ANALYSIS

Wages

On Lydiard's Appeal form it is indicated that there have been payments made for the periods in question. While there are cheque numbers and dates for amounts of monies paid, there are no cancelled cheques made out to and signed by Herd indicating that monies were paid to Herd by Lydiard. I see no evidence that would persuade me to vary the Determination with respect to wages.

Vacations

With respect to the Determination on vacations, I see no materials before me that an accurate record was kept by Lydiard contemporaneously with the employment period proving that Herd took or did not take vacations. I see nothing that would persuade me to vary the Determination with respect to vacations.

Severance Pay

Both parties clearly indicate that there was no written notice given to Herd that his employment would be terminated. There is no evidence before me that severance pay was paid to Herd on his termination of employment in lieu of the written notice required by the Act. I see nothing that would persuade me that the Determination with respect to compensation for length of service should be varied.

DECISION

In summary, I order under Section 115 of the *Act*, that Determination #CDET 000633 be confirmed.

“Jerry Brown”

Jerry W. Brown

BC EST #081/96

**Adjudicator
Employment Standards Tribunal**

EKB:96297