

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-

Econo-Wise Office Furniture Ltd.
("Econo-Wise ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: C. L. Roberts

FILE NO: 98/023

DATE OF DECISION: March 3, 1998

DECISION

This is a decision based on written submissions by Mary Jean Tuck, Office Manager of Econo-Wise Office Furniture Ltd.

OVERVIEW

This is an appeal by Econo-Wise Office Furniture Ltd. ("Econo-Wise"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued December 17, 1997. The Director found that Econo-Wise contravened Sections 40(1) and (2) of the Act in failing to pay Javier Aragon ("Aragon") overtime wages, and ordered Econo-Wise to pay \$3,411.82 to the Director on behalf of Aragon.

ISSUE TO BE DECIDED

Whether the Director correctly determined that Econo-Wise owed Aragon overtime wages.

FACTS

Aragon worked as a salesperson with Econo-Wise from April 9, 1996 to December 18, 1996. On January 9, 1997, Aragon filed a complaint with the Employment Standards Branch claiming compensation for length of service, and overtime wages. Only the issue of overtime wages was pursued.

Econo-Wise advised the Director's delegate that Aragon was paid \$8.00 per hour plus overtime pay, and that those amounts averaged into a monthly salary of \$1800.00. Aragon claimed that when he was hired, he was told his salary was \$1800.00 per month. He claims that he was not told that he was paid \$8.00 per hour and that the monthly wage included overtime pay.

The Director sought information from Econo-Wise regarding pay periods, rates of pay and hours worked (see also Appeal D087/98). Econo-Wise provided the wage calculation and hours worked for Aragon for each semi monthly pay period from April to December. The Director's delegate determined that the hours worked and the wages earned varied from pay period to pay period, and that the monthly gross earnings did not equal \$1800.00.

The Director's delegate Determined that Aragon was owed overtime wages. She determined that Econo-Wise contravened Section 27 of the Act in failing to provide Aragon with a written wage statement for the pay period stating the hours worked by the employee, the employee's wage rate, the employee's overtime wage rate and the hours worked by the employee at the overtime wage rate. The pay stubs issued to Aragon indicate only the gross earnings of the pay periods.

The Director's delegate determined that Aragon's pay stubs indicated that his gross earnings were \$900.00 per semi monthly pay stub. The Director's delegate further determined that the wage calculation provided by Econo-Wise did not support its argument that the monthly wage of \$1800.00 included both regular wages and overtime pay.

ARGUMENT

Econo Wise based its appeal on two grounds. The first is that Aragon was fully informed of his hourly rate and is not owed overtime wages. The second is that Aragon's claim was submitted after the six month period provided to file an appeal.

Econo-Wise contended that Aragon was told that his monthly salary was \$1800.00 per month, inclusive of both regular and overtime hours, but that this information was not included on his pay stubs due to an error. Econo Wise argued that Aragon ought to have raised the issue of overtime with the company prior to filing a claim, as he worked for Econo Wise for approximately 8 months.

Econo-Wise further claims that Aragon failed to file his complaint within 6 months from the date of termination, being June 18, 1997. It contends that because the Director's delegate indicated in a letter dated July 15, 1997 that the complainant was out of time to file a complaint.

ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

I shall first address the issue of whether the complaint was filed within the time period provided in the *Act*.

Section 74(3) of the *Act* provides that a complaint relating to an employee whose employment has terminated must be delivered within 6 months after the last day of employment.

The evidence is that Aragon's complaint was received by the Vancouver office of the Employment Standards Branch on January 9, 1997. Even though it took the Branch some time to commence the investigation of that complaint, I find that it was filed within the time period prescribed in Section 74, and deny the appeal on this ground.

The second issue is whether the Director correctly determined that Aragon was entitled to overtime wages.

Section 27 (1) provides that on every payday, an employer must give each employee a written wage statement for the pay period stating

- ...
- (b) the hours worked by the employee
- (c) the employee's wage rate, whether paid hourly, or on a salary basis or on a flat rate....
- (d) the employee's overtime wage rate,
- (e) the hours worked by the employee at the overtime wage rate,
-
- (i) the employee's gross and net wages
- ...

Section 28 provides that for each employee, the Employer must keep records of a number of matters, including

...

- (b) the date the employment began
- (c) the employee's wage rate, whether paid hourly, on a salary basis or on some other basis
- (d) the hours the employee worked on each day,
- (e) the benefits paid to the employee
- (f) the employees gross and net wages for each pay period, and
- (g) each deduction made from the employee's wages and the reason for it.

Econo-Wise provided the Director's delegate with Aragon's wage calculation and hours of work. Aragon's pay stubs contained only the gross earnings of the pay periods. Based on the information provided, the Director's delegate determined that Aragon was owed overtime, as the calculation provided by Econo-Wise did not support its position that the monthly rate of \$1800.00 included both regular as well as overtime wages.

No additional evidence was submitted on appeal. Econo-Wise contended that Aragon was informed that his wages were \$1800.00 per month, inclusive of overtime, and that his hourly rate was \$8.00. Econo-Wise stated however, that "...in error, we neglected to detail this information on his pay stub."

This argument does not satisfy me that the Director's determination was in error. Econo-Wise has failed to maintain records which might establish its case, and no evidence was provided in support of its position.

I deny the appeal.

ORDER

I order, pursuant to Section 115 of the Act, that the Determination, dated December 17, 1997 be confirmed in the amount of \$3411.82 together with whatever further interest that may have accrued, pursuant to Section 88 of the Act, since the date of issuance..

Carol Roberts
Adjudicator
Employment Standards Tribunal