

An appeal

- by -

A-Star Doors & Mouldings Ltd.
(“A-Star”)

- 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 (as amended)

TRIBUNAL MEMBER: Shafik Bhalloo

FILE No.: 2013A/54

DATE OF DECISION: November 8, 2013

DECISION

SUBMISSIONS

Harvir Singh Natt on behalf of A-Star Doors & Mouldings Ltd.
Tyler Siegmann on behalf of the Director of Employment Standards

OVERVIEW AND BACKGROUND

1. This decision completes an appeal filed by A-Star Doors & Mouldings Ltd. (“A-Star”) regarding a determination issued by the Director of Employment Standards (the “Director”) on July 5, 2013 (the “Determination”), which decided a complaint filed by Mandip S. Dhaliwal (“Mr. Dhaliwal”) with the Employment Standards Branch (the “Branch”) on January 24, 2013 (the “Complaint”).
2. After hearing the Complaint, a delegate of the Director found in the Determination that A-Star had contravened Part 3, section 17 (payday); Part 5, sections 40 and 46 (overtime and statutory holiday pay); Part 7, section 58 (vacation pay); and Part 8, section 63 (compensation for length of service) of the *Employment Standards Act* (the “*Act*”) in respect of the employment of Mr. Dhaliwal, and ordered A-Star to pay Mr. Dhaliwal an amount of \$1,889.23. This amount included wages and interest under section 88 of the *Act*.
3. The Director also imposed administrative penalties on A-Star under section 29(1) of the *Employment Standards Regulation* (the “*Regulation*”) in the amount of \$2,500.00 for contraventions of sections 17, 58, 40, 45, and 63 of the *Act*.
4. A-Star appealed the Determination to the Employment Standards Tribunal (the “Tribunal”). I decided the appeal which is reported at BC EST # D075/13 (the “Decision”). In the Decision, I confirmed the Determination save for the following: I found that the delegate of the Director (the “Delegate”), after concluding that Mr. Dhaliwal qualified for statutory holiday pay for Victoria Day (May 21, 2012), Labour Day (September 3, 2012) and Thanksgiving Day (October 8, 2012) and ordering A-Star to pay Mr. Dhaliwal at the regular wage rate for those holidays, failed to provide any, or sufficient, analysis of the punch-clock records of A-Star for the periods covering these statutory holidays.
5. In its appeal submissions, A-Star re-submitted the punch-clock records for May, September and October, containing handwritten notes totaling hours Mr. Dhaliwal was purportedly paid for and argued that Mr. Dhaliwal was paid eight (8) hours extra for statutory holiday pay in May and 16 hours extra in September. A-Star also argued that the payment due to Mr. Dhaliwal for the statutory holiday in October, namely, for Thanksgiving Day, is satisfied by the extra eight (8) hours that A-Star inadvertently, or mistakenly, paid Mr. Dhaliwal in September.
6. Having found the Reasons of the Delegate in relation to the award of statutory holiday pay lacking because the Delegate did not address in the Reasons the relevant punch-card records before him when he was making the Determination, I was not prepared to dismiss A-Star’s appeal with respect to the statutory holiday pay, and, relatedly, the appeal of the administrative penalty issued by the Delegate for contravention of Part 5 of the *Act*. I ordered the appeal relating to the statutory holiday pay found to be owing to Mr. Dhaliwal to proceed under section 112 of the *Act*, and invited both the Director and Mr. Dhaliwal to file submissions on this subject.

ISSUE

7. Is the Director's conclusion with respect to the award of statutory holiday pay made to Mr. Dhaliwal correct, and should the Determination with respect to the statutory holiday pay and related administrative penalty be confirmed, varied or cancelled?

SUBMISSIONS OF THE DIRECTOR

8. In his submissions, the Delegate states that at the pre-hearing conference held on June 3, 2013, he advised Harvir Natt ("Mr. Natt"), one of the directors of A-Star, that A-Star's payroll submission, presented in response to the Demand for Employer Records, did not appear to indicate that Mr. Dhaliwal was paid statutory holiday pay and that the matter of statutory holiday pay would be dealt with at the adjudication hearing (the "Hearing") and A-Star would be afforded an opportunity to provide argument and evidence on the subject.
9. Subsequently, at the Hearing, on June 7, 2013, the Delegate notes that he asked Mr. Natt if A-Star had paid Mr. Dhaliwal any statutory holiday pay, and the latter testified that Mr. Dhaliwal was not paid statutory holiday pay because he was a part-time employee, and A-Star only provides holiday pay to full-time, regular employees.
10. The Delegate further submits that at no time did Mr. Natt indicate to him that the punch-card records were evidence of statutory holiday payments to Mr. Dhaliwal, nor did the punch-card records, or any other payroll records supplied by A-Star, indicate any amounts A-Star paid Mr. Dhaliwal for statutory holiday pay. The Delegate also states there were no wage statements produced by A-Star to confirm if any wages paid to Mr. Dhaliwal included a statutory holiday component. The Delegate reiterates that he brought this matter to the attention of A-Star at the pre-hearing conference and, although A-Star had a few days before the Hearing to prepare its response, it failed to do so.
11. The Delegate further submits:

On appeal A-Star's submission now includes punch clock records that show extra hours of pay represent statutory holiday pay. This evidence is not identical to that provided by A-Star for the Hearing. In fact, the punch clock records provided for the Hearing offer no explanation or notation why hours paid to Mr. Dhaliwal exceed hours worked. A further review of all A-Star's payroll records does not reveal any clear indication that Mr. Dhaliwal received any statutory holiday pay. In particular, the redacted cheques and bank statement ... are not helpful considering this information is not related to Mr. Dhaliwal and was severed for privacy purposes.

12. In the circumstances, the Delegate submits that there is no basis to overturn the decision with respect to statutory holiday pay.

SUBMISSIONS OF A-STAR

13. Mr. Natt, in his submissions in response to the Delegate's, reiterates the same argument he made earlier in the appeal submissions respecting statutory holiday pay. I do not find anything new in those submissions and therefore I do not find it necessary to reiterate those submissions here. Moreover, I have summarized A-Star's earlier submissions and position already under the heading "Overview and Background" in this decision.

ANALYSIS

14. Having reviewed the submissions of both the Delegate and Mr. Natt, I find the Delegate's decision in the Determination with respect to the award of statutory holiday pay to Mr. Dhaliwal and the related administrative penalty levied against A-Star for contravention of section 45 of the *Act* is supported in evidence. More specifically, I find compelling the Delegate's unchallenged submissions that at the pre-hearing conference, four (4) days prior to the Hearing, he advised Mr. Natt that A-Star's payroll records did not appear to indicate Mr. Dhaliwal received statutory holiday pay and that this issue would be addressed at the Hearing where A-Star would have an opportunity to provide argument and evidence. Despite this advance notice, A-Star did not provide any evidence to support its contention on appeal that Mr. Dhaliwal was paid statutory holiday pay. To the contrary, when the Delegate asked Mr. Natt at the Hearing whether Mr. Dhaliwal was paid any statutory holiday pay, Mr. Natt said Mr. Dhaliwal was not because he was a part-time employee, and A-Star only provides statutory holiday pay to full-time, regular employees. This evidence, which Mr. Natt does not contest, is very compelling and supportive of the Delegate's decision on the subject.
15. I also note that the same punch-clock records upon which Mr. Natt relies on behalf of A-Star in contending that Mr. Dhaliwal was paid holiday pay did not contain the handwritten notations suggesting holiday pay was paid when the punch-clock records were originally submitted before the Hearing to the Delegate. The punch-clock records, without more, do not suggest unequivocally that Mr. Dhaliwal was paid statutory holiday pay. However, I find very persuasive the undisputed evidence of Mr. Natt at the Hearing, as explained by the Delegate, that A-Star did not pay statutory holiday to Mr. Dhaliwal because he was a part-time employee and not a full-time one. I find the latter evidence sufficiently persuasive that the Delegate's decision with respect to the statutory holiday pay award made to Mr. Dhaliwal and the related administrative penalty against A-Star is supported by the evidence. In the circumstances I do not find there to be any reason for me to interfere with that decision.

ORDER

16. Pursuant to section 115 of the *Act*, I order that the Delegate's Determination, dated July 5, 2013, be confirmed in relation to the Delegate's decision that A-Star contravened section 45 of the *Act* and is liable to Mr. Dhaliwal for statutory holiday pay. I also confirm the Delegate's Determination with respect to mandatory administrative penalty against A-Star under the *Regulation* for breach of section 45 of the *Act*.

Shafik Bhalloo
Member
Employment Standards Tribunal