

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 -

Somass Roofing and Gutter Shop Ltd.
("Somass")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 97/868

DATE OF DECISION: March 18, 1998

DECISION

OVERVIEW

This is an appeal by Somass Roofing and gutter Shop Ltd. (“Somass”) from a Determination of the Director’s delegate dated November 13, 1997, which determined that a number of employees: Marvin Dievert, Shawn Action, Dave Thibeau, Pat Savage, Robert Bagg, Juan Rodroquez, Bryon Antonovich, Dave Harvey, Mike Brown, Wes Cuthbert and Warren Fudge (the “employees”), employed by Somass working on the Mount Prevost Middle School in Duncan, were not paid benefits pursuant to the *Skills Development and Fair Wage Act, RSBC 1996 c. 427* (the “Act”).

ISSUE TO BE DECIDED

Did Somass pay fair wages in accordance with the terms of the *Act* to the following employees, Marvin Dievert, Shawn Action, Dave Thibeau, Pat Savage, Robert Bagg, Juan Rodroquez, Bryon Antonovich, Dave Harvey, Mike Brown, Wes Cuthbert and Warren Fudge ?

FACTS

The construction of the Mount Prevost Middle School in Duncan, British Columbia (the “project”) was a project involving a pre-tender estimate of \$4,120,000. It is a project covered by the *Act*. At all material times Marvin Dievert, Shawn Action, Dave Thibeau, Pat Savage, Robert Bagg, Juan Rodroquez, Bryon Antonovich, Dave Harvey, Mike Brown, Wes Cuthbert and Warren Fudge were employed by Somass and working on the project. The employees were roofers or apprentice roofers.

On July 26, 1996 a complaint was made by Local #1812 of the United Brotherhood of Carpenters and Joiners of America, alleging that the employees working on the project were not been paid fair wages pursuant to the *Act*. An investigation by the Director’s delegate revealed that according to time cards, account descriptions the employees were paid a different amount than that set out in a statutory declaration which was sworn by an employee of Somass. The chart below sets out the differences between the rates set out in the payroll records and in the statutory declaration for each of the employees:

Employee	Payroll Records	Statutory Declaration
Marvin Dievert	24.18	25.79
Shawn Acton	24.28	25.79
Dave Thibeau	22.73	not shown
Pat Savage	24.42	25.79
Robert Bagg	23.84	25.79
Juan Rodriguez	22.58	23.90
Byron Antonovich	22.53	not shown
Dave Harvey	22.85	not shown
Mike Brown	22.77	23.90
Wes Cuthbert	24.28	25.79
Warren Fudge	23.80	25.79

The Director's delegate prepared calculations based on the hours worked in pay periods and determined that each one of the employees did not receive the proper benefits under the provisions of the *Act*. The Directors delegate determined that the following employees were owed the following wages:

Employee	Wage	Interest	Total
Marvin Dievert	248.82	16.45	265.27
Shawn Acton	261.44	17.29	278.73
Dave Thibeau	289.15	19.12	308.27
Pat Savage	83.14	5.50	88.64
Robert Bagg	125.27	8.28	133.55
Juan Rodriguez	171.87	11.36	183.23
Byron Antonovich	85.22	5.64	90.86
Dave Harvey	173.39	11.47	184.96
Mike Brown	187.74	12.41	200.15
Wes Cuthbert	158.03	10.45	168.48
Warren Fudge	129.82	8.58	138.40
Total			\$2,040.44

The Director's delegate issued a Determination finding that there was a breach of the *Act* and ordering that Somass pay the sum of \$2,040.44 by way of 11 certified cheques made out to the above employees. The Director's delegate also ordered that Somass cease violating the *Act*.

The employer in written submissions filed indicated that the full information was not provided to the Director's delegate, and some further wage rate calculations were provided. The employer maintained that it had never intended to violate the *Act*, and had paid the employees fair wages within the meaning of the *Act*.

ANALYSIS

In this case, the onus is on the employer to establish that the Determination ought to be varied or cancelled. The *Act* clearly sets out that the employer must keep records, and that the pay statement given to the employees must set out the hourly rates and benefits received (s. 9). One of the purposes of the *Act* is to ensure that employees are paid fair wages within the meaning of the *Act* when they work on projects which are publicly funded. The Director has been given the mandate to investigate and determine whether the employer is paying fair wages.

In the *Act*, fair wages are defined as those wages and benefits that are set out in the Regulations (s. 1). It is of course open to an employer to pay more than these rates. If the employer provides benefits less than the amount set out in the schedule the employer must pay the difference as part of the hourly rate, and clearly set out on the employee's pay statement, and the employers records, the amount as a benefit top up (s. 3(2)(3)). The schedules set out in the Regulations set out the minimum hourly rate, hourly benefit and total minimum compensation amounts for various trades and occupations.

It is clear from the material filed that the employer failed to comply with sections 2(2)(3) and 9 of the *Act*. There is a clear difference between the statutory declaration filed by the employer, and the actual records.

I agree with the Director's delegate that the method chosen by Somass to keep its records is confusing. I am not persuaded from the material provided by Somass that there was any error on the part of the Director's delegate. It would have been a very simple matter for Somass to set up its records for the employees and the Director to see that there was compliance with the *Act*. In the two examples cited in the Determination, it is clear Dave Thibeau and Pat Savage were not paid fair wages in accordance with the *Act*.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated November 13, 1997 be confirmed.

Paul Love
Adjudicator
Employment Standards Tribunal