

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 -

Restech Food & Beverage Services
(“Restech”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Niki Buchan

FILE NO.: 96/651

DATE OF HEARING: February 24, 1997

DATE OF DECISION: February 24, 1997

DECISION

APPEARANCES

Alan Sproule	For Restech
Dale Sproule	For Restech
Michael Taylor	For the Director
Allan A. Tapp	For Himself
Ernie I. St. Louis	Witness
Dennis Sproule	Witness

OVERVIEW

This is an appeal filed by Restech pursuant to Section 112 of the *Employment Standards Act*(the “*Act*”) from a Determination of a delegate of the Director, CDET No. 004331 dated October 16, 1996. The Determination states Section 58(1) (amount of vacation pay), Section 58(3) (if employment terminates, vacation pay to be paid according to Section 18 of the *Act* and Section 63(2) (amount employer is liable to pay on individual termination of employment).

The Director determined that Allan W. Sproule Operating as Restech Food and Beverage Systems owed its former employee Allan A. Tapp(“Tapp”), the sum of:

1. \$ 1554.00 Length of service compensation and \$ 93.48 vacation pay at 6% on that amount. The total LOSC payable: \$ 1657.84.
2. \$ 638.80 total vacation pay payable for the years 1995,1995 and 1996. This being the adjusted amounts paid at 4 % instead of at 6%.
3. \$ 102.33 Interest to October 11, 1996 on the total amount of wages and vacation pay owing

The appellants argues that the reasons for the Determination are based on statements or determinations that are at best inaccurate and in several cases completely false. It requests a setting aside or amending of the Determination.

ISSUE TO BE DECIDED

Whether the Reasons for the Determination are in error, based on inaccurate or false facts?

FACTS

It was agreed during the hearing of the evidence that the calculations for vacation pay were in error. An agreed amount was determined to be correct.

Part way through the evidence the parties agreed to attempt a settlement since there seems to have been some misunderstanding as to whether the Complainant was terminated or temporarily laid off. The hearing was adjourned. On resumption of the hearing I was requested to issue following consent order.

ORDER

In summary, I order under Section 115 of the *Act*, the Determination No. CDET 004331 be cancelled and issue the following consent order:

CONSENT ORDER

WHEREAS the Employment Standards Tribunal (the “Tribunal”) has received an appeal of Determination No. CDET 004331 pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”);

AND WHEREAS the undersigned was appointed as an Adjudicator of the Tribunal pursuant to Section 102(2) of the *Act* to deal with this matter;

AND WHEREAS the Appellant and the Other Party were able to settle their differences, and based on the submissions of the parties, the Tribunal is satisfied that the terms of the settlement are not contrary to the *Act*, or the *Regulation*, and the parties have requested the Tribunal to issue the following Consent Order:

NOW THEREFORE, PURSUANT TO SECTION 115 OF THE ACT, THE TRIBUNAL MAKES THE FOLLOWING ORDER BY CONSENT:

1. Restech Food and Beverage Services shall pay to Allan A. Tapp the sum of \$ 1000.00 in settlement of the entire matter including vacation pay, length of service compensation and interest as set out in Determination CDET No. 004331.
2. The cheque shall be issued on February 25, 1997 and may be picked up by Mr. Tapp at Clancy’s on that date.

DATED AND EFFECTIVE at Cobble Hill, British Columbia, this 24th day of February, 1997.

EMPLOYMENT STANDARD TRIBUNAL

Niki Buchan
Adjudicator