

**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 -

Leslie S. Szlovak

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorna Pawluk

**FILE NO.:** 96/674

**DATE OF HEARING:** February 14, 1997

**DATE OF DECISION:** March 3, 1997

**DECISION**

**APPEARANCES**

Leslie Szlovak            on his own behalf  
  
David Lippert            on behalf of Dare Foods Ltd.

**OVERVIEW**

This is an appeal by Leslie S. Szlovak pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination #CDET 004412 of the Director of Employment Standards (the "Director") issued on October 23, 1996. In this appeal, the employee claims unpaid wages.

**ISSUE TO BE DECIDED**

The issue is whether Dare Foods Limited ("Dare") owes Leslie Szlovak unpaid wages.

**FACTS**

Mr. Szlovak was employed loading and unloading trailers. He was not a full time employee, but was called in when there was unloading to do and was paid \$12 per hour. His supervisor Leo Monachalin was off work in October and November of 1995 due to a car accident; Mr. Szlovak said that during this time he performed many of Leo's duties. He said that he did not keep track of his hours on a daily basis as the company did not have a time card system but that he would report to work at 6 a.m. and would stay there until 6 p.m., after other workers had gone home. He said that he and Leo agreed that the overtime was to be banked and that he banked approximately 100 hours during Leo's absence. When Mr. Szlovak quit his employment on July 3, 1996, he had not received the promised time off with pay and is now seeking payment.

Mr. Szlovak said that Leo guaranteed him eight hours of pay per trailer, regardless of the actual time taken to perform the work. Typically, it took him 5 to 5 1/2 hours per full trailer. Some of his work involved unloading smaller trailers; his guaranteed hours were reduced accordingly. He said that Leo would not pay him for more than 40 hours a week and the extra hours were taken when business was slow. He said that Dare management did not know about this arrangement; it was an arrangement between him and Leo, and he trusted Leo to live up to his end of the bargain.

On behalf of Dare, Mr. Demetruk, District Sales Manager and Leo's immediate supervisor, testified that Mr. Szlovak was not asked to perform all of Leo's duties. Some were assigned to Lynda Elliott and others to Joe Mercier who was brought in from Edmonton for 3 or 4 days, and who also continued to perform some of those duties in Edmonton. Mr. Demetruk said that Mr. Szlovak was not promised over time and had not requested any overtime. He said he first learned of the overtime when the Employment Standards Branch performed its investigation.

Lynda Elliott testified that part of her duties included reporting hours worked to payroll. She was not aware of the 8 hour guarantee or over time arrangement between Leo and Mr. Szlovak. She was also never told of the overtime worked by Mr. Szlovak during Leo's absence, by either Leo or Mr. Szlovak.

The Employment Standards Officer who investigated Mr. Szlovak's complaint found, that he was owed certain unpaid sums but not for overtime earned during Leo's absence. The basis of this decision was the employer's records; Mr. Szlovak had no evidence to rebut the employment records showing no over time, but only regular hours.

## **ANALYSIS**

Like the Employment Standards Officer who investigated Mr. Szlovak's complaint, I prefer to rely on the written records of the employer over the verbal recollection of Mr. Szlovak. Thus, I agree that no wages are owed for overtime. Mr. Szlovak said that he did not expect to get paid for the over time, but understood from Leo that he would get time off. Over the course of the next six months, after Leo had returned to work, the agreement had not been honoured by Leo and yet Mr. Szlovak continued to report for work. This unmet obligation also had nothing to do with Mr. Szlovak's resignation, which centred on the fact that Leo's sons were being brought in to do work formerly performed by Mr. Szlovak.

Much was made of the arrangement between Leo and Mr. Szlovak for a guaranteed 8 hours for every trailer unloaded. Mr. Szlovak insisted that such an arrangement existed; Dare just as adamantly denied it. Even if I find that such an arrangement existed, it had no bearing on this case since Mr. Szlovak was not claiming for the guaranteed hours. Rather, he was claiming for over time put in while Leo was away.

**ORDER**

Pursuant to Section 115 of the *Act*, I hereby confirm Determination No CDET 004412.

**Lorna Pawluk**  
**Adjudicator**  
**Employment Standards Tribunal**