



BC EST #D104/96

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 -

SGS Farm Contractors Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Jerry W. Brown

FILE No.: 96/114

DATE OF DECISION: June 12, 1996

DECISION

OVERVIEW

This is an appeal brought by SGS Farm Contractors Ltd. ("SGS") pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from Determination No. CDET 000810 issued by the Director of Employment Standards (the "Director") on January 18, 1996. The Director determined that SGS, the employer, had contravened the Act as set out the claim filed by Surjit K. Chahal ("Chahal").

Chahal claimed that SGS failed to pay wages owed for berry picking during the period from June 5, 1995 to August 13, 1995. In addition, there is a claim for an additional 58 hours to be paid at minimum wage. This issue is addressed in the submission of the Director's delegate.

FACTS

Chahal began working for SGS on or about June 3, 1995. Chahal's last day of employment with SGS was August 13, 1995. Chahal picked 11,331.5 lbs of blueberries and 5,714.5 lbs of raspberries during her employment, as calculated from the picking cards supplied by Chahal and not disputed by SGS. The following wages paid are not in dispute:

1. Wage advance of \$1,000 paid during Chahal's employment;
2. \$1,536 gross wages, or \$932 net wages, paid on or about December 18, 1995 during the course of the investigation.

The Act states:

Section 16: The employer is required to pay the minimum wage

16. An employer must pay an employee at least a minimum wage as prescribed in the Regulation.

During the period in question, the minimum wage for farm workers is based on piece work rates for harvesting crops was:

1. Blueberries: .295¢ per pound; and
2. Raspberries: .255¢ per pound.

ISSUES TO BE DECIDED

1. Is the relevant minimum wage rate based on a piece work basis as Chahal alleges, or a monthly salary as SGS alleges?
2. Dependent upon the rate of pay, what are the wages, if any, owed by SGS?
3. Is Chahal owed an additional \$392.08 for 58 hours of work at minimum wage?

ANALYSIS

Issue #1: Was Chahal employed on a piece work basis or on a monthly base salary?

Chahal provided to the officer picking cards clearly setting out the amount of product she picked. SGS took no issue with the picking cards or the total other than indicating that they were meant for proving to the producers that SGS workers had harvested the fruit. SGS alleges they were filled out to keep a record for the producers, not as a device to keep track for the purposes of paying employees.

Additionally, when SGS provided material for its appeal of the Determination, they included a marked up photocopy of what they are saying is a payroll record for Chahal. I find this of little help in that it does not appear to be completely filled out. As well, it has additional pen markings as explanations made on the photocopy. SGS also provided a photocopy of a T4 for Chahal in support of SGS's position.

The Act provides that employers must keep accurate records of the hours an employee has worked each day. If this had been the case, and they had been provided, the decision-making process might have been easier.

Based on the evidence before me, I find it more likely that Chahal's rendition of events is accurate. It appears that the picking cards support her contention that she was hired on a

piece work basis, as is the general practice in the industry. SGS "documents" are not persuasive nor helpful.

SGS has not met the burden of proof required of an appellant, and has not persuaded me to vary the Director's Determination that Chahal was to be paid on a piece work basis.

Issue #2: Dependent upon the rate of pay, what are the wages, if any, owed by SGS to Chahal?

With respect to the calculations as set out in the Director's Determination, SGS has not taken issue with the picking cards or the amounts set out in the picking cards. The wage rates to be paid to farm workers paid on a piece work basis for harvesting fruits and vegetables are set out in the Regulations. Workers are to be paid .295¢ per pound for blueberries and .255¢ per pound for raspberries. The Director's delegate's calculations were as follows:

Blueberries:	
11,331.5 lbs x .295 =	3,342.79
Raspberries:	
5,714.5 lbs x .255 =	<u>1,457.20</u>
	4,799.99
Vacation Pay:	
4% x 4,799.99	<u>192.00</u>
Total Wages Earned	4,991.99

I find that the above calculation is correct and now will address the issue of monies paid by SGS.

There is no dispute between the parties that there was \$1,000 paid during the period of employment by SGS. As well, there is no dispute that SGS paid, directly to Chahal, \$932 net or \$1,536 gross on or about December 18, 1995. SGS alleges that it paid an additional \$1,000 to Chahal but has provided no cancelled cheque as proof of this. I am unpersuaded by SGS's evidence and therefore find that SGS did not pay a second \$1,000 advance to Chahal.

Given the above, I also find the following calculation as made by the Director's delegate to be correct:

Wage Advance	1,000.00
Payment December 18/95	932.00
C.P.P.	72.97
U.I.C.	102.00
Income Tax	<u>429.03</u>
	<u>2,536.00</u>
 Balance Wages Payable	 <u>2,455.99</u>

The Director's Delegate also indicated that interest was not to be calculated on the above amount of \$2,455.99. However, in the submission for this appeal the Director's delegate states that interest should have been included in her Determination. The Act provides that interest is to be paid on unpaid wages. I therefore find that interest for the period from November 1, 1995, to January 18, 1996 in the amount of \$41.70 should be added to the wages payable and that the total amount owing is \$2,497.69.

Issue #3: Is Chahal owed an additional \$392.08 For 58 hours of work at minimum wage?

I find that there is no evidence before me to support Chahal's claim that she is entitled to additional wages for the 58 hours she claims she has worked for SGS.

In summary, based on the materials before me, I find nothing which persuades me to alter the Director's delegate's decision other than to increase it to account for an amount of interest erroneously omitted.

ORDER

In summary, I order under Section 115 of the Act, that Determination No. CDET 000810 be varied by increasing the amount owed by SGS for unpaid wages by \$41.70 for a new total of \$2,497.69 to be paid by SGS to Chahal.

Jerry W. Brown
Adjudicator
Employment Standards Tribunal

EKB:99136