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 -

Joyce Crummer
(" Crummer ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 2000/069

DATE OF HEARING: February 28, 2000

DATE OF DECISION: March 10, 2000

DECISION

APPEARANCES:

Joyce & Harold Crummer	for Joyce Crummer
Christopher Fraser, Attorney	for Daily Race Form of Canada Ltd. (by teleconference)
No appearance	for the Director of Employment Standards

OVERVIEW

This is an appeal brought by Joyce Crummer ("Crummer") pursuant to section 112 of the *Employment Standards Act* (the "*Act*") from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on September 1st, 1999 under file number ER 093-346 (the "Determination").

The Director's delegate determined that Ms. Crummer's former employer, Daily Race Form of Canada Ltd., did not owe her any unpaid wages. Accordingly, Ms. Crummer's unpaid wage complaint was dismissed.

ISSUES TO BE DECIDED

Ms. Crummer asserts that the delegate erred in three respects, namely:

- her entitlement to overtime pay was not calculated correctly;
- her entitlement to vacation pay was not calculated correctly; and
- her entitlement to minimum daily pay was not calculated correctly.

I shall deal with each of the above in turn.

FACTS AND ANALYSIS

For over 10 horse racing seasons, Crummer worked at Hastings Park for the Daily Race Form of Canada Ltd. and its predecessor companies. She worked as a "call-taker" and track operator; her duties principally involved recording relevant race information which was, in turn, recorded in the employer's publication which was sold to race track punters. At the end of her employment, she was earning a weekly wage of $420 which, in turn, was based on a 42-hour work week. In fact, however, Crummer did not always work 42 hours in a week--some weeks she worked more than 42 hours; in other weeks, she worked fewer hours.

The racing season runs from the spring (April) to the late fall (November) and at the end of each season, Crummer's employment ended (and a record of employment was issued to her); she was subsequently rehired each spring. Thus, for the period is question (September 1997 to August 9th, 1998) it must be understood that Crummer had two separate periods of employment the last being of some 4 months' duration. Accordingly, her entitlement to vacation pay and termination pay must be based on her "consecutive" months or years of employment and not her total service with the employer. As a result, her entitlement to vacation pay was 4% not 6% as she claims (see section 58) and her entitlement to compensation for length of service amounts to no more than 2 weeks' wages (see section 63) based on 1 week's wages for each of the two separate periods of employment spanned by the Determination.

In light of the foregoing, Crummer's claim for vacation pay was properly dismissed (as noted in the Determination, Crummer, during the investigation acknowledged that her employer did pay her vacation pay in accordance with the *Act*). The payroll records provided to the delegate indicated that Crummer was paid at least 4% vacation pay. Crummer also says that she was entitled to vacation pay on her termination pay entitlement and that is so. However, the employer actually paid Crummer $9,240 in termination pay, an amount substantially in excess of its maximum statutory obligation to her, namely (at most), 2 weeks' wages plus an additional 4% for vacation pay.

Crummer says that she did not always receive credit for minimum daily hours. Section 34 of the *Act* states that, in general, employees must be paid for at least 4 hours' work even if the employee actually works fewer hours. However, I have reviewed the delegate's calculations and, although there are several days when Crummer worked, for example, only a single hour, she was nonetheless credited with at least 4 hours for each day where she worked less than 4 hours. I am not sure if Crummer has simply misread the delegate's calculation sheet but, in any event, the delegate, so far as I can gather, correctly applied section 34 in her calculations.

Crummer also says that the delegate used an incorrect hourly wage figure for purposes of calculating overtime, minimum daily pay and statutory holiday pay. As noted above, Crummer received a weekly wage of $420 which, in turn, was based on a 42-hour work week. In order to convert this weekly wage into an hourly wage (so that, for example, overtime and minimum daily pay can be calculated) the delegate was obliged to apply the formula set out in section 1 of the *Act* under the definition of "regular wage". Applying that formula, it is clear that Crummer's regular wage was $420 divided by 42 hours ("normal or average weekly hours of work") which results in a regular hourly wage of $10--the very figure used by the delegate in her calculations with respect to overtime, daily pay and statutory holiday pay. In addition, when Crummer worked on a Sunday, she was entitled to a daily rate of $140 (separate and apart from her weekly salary)--the delegate also correctly applied the relevant formula in calculating Crummer's wage entitlement for the various Sundays that she worked. I reject (for want of evidence) Crummer's position that she was entitled to be paid $210 for each and every Sunday that she worked; the only evidence before me indicates that the Sunday pay was the lesser $140 figure.

I am satisfied from my review of the evidence and the delegate's calculations that Crummer has been paid all of the monies to which she is entitled under the *Act*--indeed, if anything, it appears that the employer paid Crummer more than she was entitled to be paid under the *Act.*

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal