

BC EST #D115/99

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 -

Brian Tait dba BMT Contracting

(“Tate or employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Paul E. Love

FILE NO.: 1998/788

DATE OF HEARING: March 16, 1999

DATE OF DECISION: March 30, 1999

DECISION

APPEARANCES

Brian Tait

Arnold Sankey by telephone conference call

Kevin Molnar for the Director of Employment Standards

OVERVIEW

This is an appeal by Brian Tait (the “employer”) of a Determination dated November 19, 1998 . The Delegate found that the sum of \$ 504.77 (including interest) was due and owing to Mr. Sankey. Mr. Tait filed an appeal. At the hearing Mr. Tait admitted that the money was due and owing to Mr. Sankey. There was no error demonstrated in the Determination, and I confirmed the Determination.

ISSUE TO BE DECIDED

Was Mr. Sankey entitled to the sum of \$500 for regular wages?

FACTS

Mr. Tait is engaged in the silviculture business as BMT Contracting. Mr. Tate’s business involved providing tree planting and spacing services to private sector firms as well as the Ministry of Forests. Mr. Sankey was an employee who was employed Mr. Tait. The employer assigned work to the employees based on strips or areas within a block which were laid out by an engineer. It was the practice of BMT to permit employees to work with other employees on the same strip as “partners. Mr. Sankey and Mr. Collier worked for Mr. Tait on the same strip, and were entitled to be paid wages by Mr. Tait.

Mr. Tait drew a cheque for Mr. Sankey’s wages that did not clear. This cheque was in the nature of an advance against wages earned. It was the practice of Mr. Tait not to pay his workers in accordance with the *Act* but rather when he had received a settlement under his own contract. Mr. Tate drew another cheque payable to a Mr. Collier, which included an amount for Mr. Sankey. Mr. Collier did not provide Mr. Sankey with the funds. Mr. Tait further alleged that Mr. Sankey intended to “rip him off” for the wages as well as the cheque which did not clear. There is no factual basis supporting the employer’s assertion.

At the hearing Mr. Tait admitted that amount set out in the Determination was due and owing to Mr. Sankey for wages. Mr. Tait apparently filed the appeal because he was looking for a method to recover the overpayment to Mr. Collier of Mr. Sankey's wages. Mr. Collier apparently did further work for Mr. Tait and Mr. Tait has recovered the wages.

ANALYSIS

It appears that this entire problem could have been avoided by the employer by paying to Mr. Sankey the wages that were owing to him, rather than paying the wages to Mr. Collier to give to Mr. Sankey. At the hearing of this matter, the employer admitted that he funds were due and owing to Mr. Sankey.

The Delegate did not err in his assessment of this matter.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated November 19, 1998 be confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal