

An appeal

- by -

Kan Wood Ltd.

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113 (as amended)

TRIBUNAL MEMBER: John M. Orr

FILE No.: 2005A/76

DATE OF DECISION: July 29, 2005

DECISION

OVERVIEW

1. This is an appeal by Kan Wood Ltd. (“Kan Wood”) pursuant to S.112 of the *Employment Standards Act* (“the Act”) from a Determination dated April 27, 2005 issued by the Director of Employment Standards (“the Director”). The Determination found that Kan Wood had employed Beant Sekhon (“Sekhon”) as a mill worker from November 25, 2002 to August 27, 2004. The Director found that certain overtime, statutory holiday pay, vacation pay and compensation for length of service were owing to Sekhon. The total wages payable with interest was \$3,080.04.
2. The Director also imposed four administrative penalties of \$500.00 each for the infractions of the Act. This brought the total payable to \$5,080.04.
3. Kan Wood has filed an appeal with the Tribunal alleging that the Director was one sided and that the employee had been paid.
4. In the exercise of its authority under section 36 of the *Administrative Tribunals Act* (incorporated into Section 103 of the Act) the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ANALYSIS

5. Section 112 of the Act provides that a person served with a determination may appeal the determination to the Tribunal on the following three grounds:
 - (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was being made.
6. If it was established that the Director was “one sided” it would be open to the Tribunal to conclude that there was an error in law or that the director had failed to observe the principles of natural justice.
7. However, the onus is on the appellant to substantiate such an allegation and Kan Wood has provided no clear indication of the basis for the allegation. In fairness to the appellant I have reviewed the reasons for the determination and the record of the proceedings to see if there is any indication of procedural unfairness or “one sidedness” in assessing the evidence submitted to the Director. I am unable to find any indication of unfairness or unreasonableness in the process or in the assessment of the evidence.
8. While the Director found against Kan Wood there is no indication of unfairness. In fact the Director accepted some part of the submission made by Kan Wood and re-adjusted the claim accordingly.
9. While it might have been argued that the imposition of four penalties under the circumstances was contrary to the principles of natural justice the penalties were not appealed in this case.

10. Kan Wood further argued that the employee had been paid but provided no new evidence to support this claim. I have reviewed the appeal and the information contained in the documents provided by the Director. It is apparent that the Director considered all of the information. The Director considered and understood all of the submissions made by Kan Wood. The Director applied the proper legal principles and came to a well-reasoned conclusion based on the information provided by the complainant and Kan Wood. I am not persuaded that there is any factual basis or legal principle that would warrant any alteration of the Determination. Accordingly, I conclude that the Determination should be confirmed.

ORDER

11. I order, under section 115 of the *Act*, that the Determination herein is confirmed.

John M. Orr
Member
Employment Standards Tribunal