

An appeal

- by -

Okanagan Truck Tarps 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

ADJUDICATOR: Cindy J. Lombard

FILE No.: 2003A/24

DATE OF HEARING: March 28, 2003

DATE OF DECISION: April 8, 2003

DECISION

APPEARANCES:

The Appellant employer, Okanagan Tarps Ltd., was represented by the principal of the company, Murray Newman (“Newman”) who gave evidence as well as the following two witnesses:

Peggy Newman, the mother of Newman
Allen Gunnlaugson

The Respondent employee, Sandra O’Gorman (“O’Gorman”) appeared and gave evidence.

OVERVIEW

This is an appeal pursuant to section 112 of the Employment Standards Act (the “Act”) by Newman of a Determination which was issued on December 17, 2002 which made the following findings:

Newman owes wages to O’Gorman for Nov 1 and 2, 2001 in the amount of \$70.72 inclusive of vacation pay and plus section 88 interest of \$3.40 for a total of \$74.12.

ISSUE TO BE DECIDED

Did the delegate of the Director of Employment Standards (the “delegate”) make a reviewable error in finding that Newman owes wages to O’Gorman for minimum hours pursuant to section 34(2)(a) of the Act for a minimum of four hours worked?

FACTS

Newman operates a company which manufactures and sells truck tarps. O’Gorman was employed between August 23, 2001 to November 2, 2001 as a general laborer/assistant at a rate of \$8.50 per hours.

The respondent was employed on a fulltime basis working Monday to Friday 8:30 am to 5:30 pm with a half an hour lunch break. The respondent was regularly off for two hours each Friday to deal with personal business. She was paid on a weekly basis.

On October 31, 2001 O’Gorman gave Newman two weeks notice that she was going to leave her employment due to the symptoms of an ongoing work related injury.

On November 1, 2001 the appellant reported to work but after one hour (says Newman) to three hours (according to O’Gorman) O’Gorman stated that she could not continue “heat sealing” the tarps which weighed between 65 and 85 pounds. Newman told her to get a doctor’s note that she was only capable of light duties and to call him if she was unable to come to work the following day. O’Gorman says that Newman in fact said to her, “You must be here at 8:30 am ready to work or you will be fired.”

On November 2, 2001 the appellant reported to work. She was ready and willing to work. Newman says she said that she could not work. Newman did then proceed to let her go.

Newman says that he overpaid O’Gorman and therefore that the delegate of the Director was wrong in finding that O’Gorman was owed minimum wages worked on November 1 and 2, 2001.

ANALYSIS

Pursuant to section 112 of the Act the onus is on the appellant, Newman, to show on a balance of probabilities that the delegate made a reviewable error in finding that Newman owed wages to O’Gorman for minimum hours pursuant to section 34(2)(a) of the Act for a minimum of four hours worked ? Reviewable grounds are as follows:

- a) the delegate erred in law;
- b) the delegate failed to observe the principles of natural justice;
- c) new evidence has come available since the making of the Determination.

After reviewing the payroll record of the employer Newman the delegate determined that the appellant had been paid for all days worked up until October 31, 2002. He went on to say that if the employer’s timesheets were correct then O’Gorman was over paid. We accept O’Gorman’s evidence as credible that the time sheets were kept not for the purpose of showing her total time worked in any given day but to provide a break down of time worked with respect to various clients in order that the client would be properly billed.

The delegate did not err law, nor did he fail to observe the principles of natural justice and the appellant presented no new evidence not considered by the delegate.

The appellant has therefore not met the onus on him and for the foregoing reasons the appeal is dismissed.

ORDER

Pursuant of Section 115 of the Act, I order that the Determination be confirmed as issued in the amount of \$74.12 plus any interest which has accrued pursuant to Section 88 of the Act.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal