

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 -

DESIGN PLANNING CO-ORDINATION SERVICES COMPANY LTD.
("Design Planning")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Barry Goff

FILE NO.: 95/028

DATE OF HEARING: May 16, 1996

DATE OF DECISION: May 31, 1996

DECISION

APPEARANCES

Design Planning, W. L. Breti ("Breti"), the Appellant
T. Hundey, J. Dagg, J. Hanen, the Complainants
Gillian MacGregor, Delegate of the Director of Employment Standards

OVERVIEW

This is an appeal by Design Planning pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination No. CDET 000236 issued by the Director of Employment Standards on November 29, 1995. The Determination was issued following a number of complaints that the employer had contravened the provisions of the *Skills Development and Fair Wage Act (Fair Wage Act)* by failing to pay the required wage rates and ordered that Design Planning pay \$9607.91.

Breti, the appellant on behalf of Design Planning, stated that on advice from legal counsel he would not participate in the proceedings and would not make any comments with respect to his appeal. Breti further indicated that he had requested an adjournment of the proceeding from the Registrar on two grounds: his father was in a Regina hospital and a Mr. Christopher Taylor had died on April 7, 1996.

Upon hearing the appellant's application, the panel stood down while the Employment Standards Registrar was consulted. The Registrar of the Employment Standards Tribunal confirmed by telephone that the appellant had requested an adjournment for the identical reasons expressed to the panel and had been denied by the Registrar. Since the appellant provided no new grounds for the adjournment application, his application was denied.

The panel advised Breti it would proceed to hear the matter and provide an opportunity for him to seek legal advice in view of the panel's decision to proceed. Breti took a brief adjournment, returned to confirm he would not participate in the hearing and left.

FACTS

The Director's delegate, Gillian MacGregor, received the first of a number of complaints against Design Planning and attended its job site in August 1995 at the Garibaldi Highlands Elementary School project ("the Garibaldi project"). MacGregor informed Breti that the proper wage rates on a fair wage site had not been paid. Breti responded that all of the work on the site was sub-contracted and provided a list of sub-contractors involved on the site. The complainant involved (Gary Woods) was not included in the list of sub-contractors and MacGregor concluded that therefore Woods was an employee of Design Planning. MacGregor advised Breti by letter of September 8th, 1995, of her conclusion regarding Woods' employment status and set out the wages owing to Woods under the *Fair Wage Act* and provided all the information in respect of the *Fair Wage Act*. Breti did not

respond to this letter which prompted another letter from MacGregor on November 8, 1995 requesting Breti to respond and advising that four additional complaints had been filed. She further requested that he provide his payroll records for the period of their employment by November 16, 1995. Breti did not respond and did not provide the records as requested. In response, MacGregor proceeded to set out the appropriate amounts to be paid to each of the complainants in determination 000236 based on the information provided by the complainants.

MacGregor found further support for the hours claimed through a letter written to Breti on September 6, 1995 by Ross Selby, the Capital Projects Assistant for School District No. 48. The letter advised Breti that Selby had received a number of complaints regarding compensation for work performed on the Garibaldi project. The letter sets out the complainant's names with the hours worked, the minimum total compensation required under the *Fair Wage Act* for each and the wages paid to date. MacGregor stated that the handwritten changes on this letter were made by Breti. Breti made minor changes to the hours claimed in the letter by each of the employees, crossed out the heading "wages paid" and replaced it with "Advances" and refers to the work as "site clean-up". By making these changes to the letter Breti has confirmed that the complainants worked for him and that there are only minor differences over the number of hours worked.

Three of the complainants provided evidence at the hearing, confirmed their participation on the job site as labourers at \$10.00 per hour and modified some of the information with respect to the hours of work that each had performed and advances received. As a result of their evidence MacGregor requested that some of the determinations be varied in accordance with the new information provided.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Design Planning owes wages in accordance with the *Fair Wage Act* to the complainants.

ANALYSIS

In view of Breti's refusal to provide any information to the panel concerning this appeal, I accept the evidence provided by the Director's Delegate and the complainants without reservation. It is clear that the site in question falls under the *Fair Wage Act* of British Columbia which sets out the minimum wage rate for all classifications of employees on a fair wage site. The minimum rate provided for a labourer/helper on site, clerk or equivalent is \$19.90 per hour plus \$4.00 in benefits per hour for a minimum compensation of \$23.90. There is no question that the complainants worked on the job site and are therefore entitled to the minimum wage rates stipulated in the *Fair Wage Act* as set out below:

Wages Owing:

Complainant	Should have been	Less wages paid	Total Wages
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	paid		Owing
Gary Woods	\$ 167.30	\$ 70.00	\$ 97.30
J. Watson	\$2,796.30	\$1,170.00	\$1,626.30
T. Hundey	\$2,103.20	\$ 815.00	\$1,288.20
J. Hanen	\$4,397.60	\$1,350.00	\$3,047.60
J. Dagg	\$3,824.00	\$ 400.00	\$3,424.00

Calculation of Wages Owing with Interest as at May 31, 1996:

Complainant	Wages Owing	Interest	Total
Gary Woods	\$ 97.30	\$ 4.26	\$ 101.56
J. Watson	\$1,626.30	\$ 71.21	\$1,697.51
T. Hundey	\$1,288.20	\$ 56.41	\$1,344.61
J. Hanen	\$3,047.60	\$133.45	\$3,181.05
J. Dagg	\$3,423.00	\$149.93	<u>\$3,573.93</u>
		TOTAL:	<u>\$9,898.66</u>

CONCLUSION

I order pursuant to Section 112 of the Act that determination CDET 00236 be varied and confirmed with interest to May 31, 1996 for \$9,898.66.

Barry Goff
Adjudicator
Employment Standards Tribunal

BJG:sc