

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-

Balbir Gill and Jasbir Kalsi, operating as
R.K.K. Furniture Manufacturing and R.K.K. Furniture

(“RKK” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 98/027

DATE OF DECISION: April 2, 1998

DECISION

OVERVIEW

This is an appeal brought by Balbir Gill and Jasbir Kalsi, operating as R.K.K. Furniture Manufacturing and R.K.K. Furniture (“RKK” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on December 19th, 1997 under file number 75-493 (the “Determination”).

The Director determined that the employer owed its former employee, Balwinder Janda (“Janda”), the sum of \$9,315.11 on account of unpaid overtime, vacation pay, two weeks’ wages as compensation for length of service and interest pursuant to section 88 of the *Act*.

ANALYSIS

The employer’s appeal was filed on January 12th, 1998. By way of a letter dated January 13th, 1998 the employer and the employee were both advised by the Tribunal Registrar that an oral hearing would not necessarily be held and that both parties should submit, for the Tribunal’s consideration, any and all records and other documents upon which the parties intended to rely in support of their respective positions.

The employee submitted a brief written submission in support of the Determination; the employer did not submit any further information or documentation for the Tribunal’s consideration.

The employer’s grounds of appeal are particularized as follows:

1. The Director did not do the proper investigation.
2.
 - (a) Two weeks Notice is given.
 - (b) Holiday Pay is already paid.
 - (c) Overtime is also paid bu [sic] the different chques [sic] other than pay chques [sic].
3. Holiday Pay, Two weeks Notice, Overtime.
4. The director decision is wrong and the Appellant do not owe any money to Mr. Janda. So here it is requested that the Determination issued by the Director should be dismissed. [sic]

It is clear that the Employer disagrees with the findings made by the Director’s delegate in the Determination. However, the employer has not provided any new information in support of its

position other than to submit, as attachments to its appeal form, some of the very same documents that were before the Director's delegate and which have already been dealt with in the Determination.

On the basis of my perusal of the entire file, it is absolutely clear that the Director fully complied with section 77 of the *Act*. I do not consider that there is any merit to the first ground of appeal set out above. Nor am I satisfied that the employer has presented *any evidence* (as compared to unsubstantiated allegations) to support its other grounds of appeal.

In upholding Mr. Janda's complaint against the employer, the Director made certain findings that have not, in any way, been controverted by contrary information or documentation submitted by the employer. These findings include:

- the employer failed to maintain proper payroll records;
- the employer was unable to produce any documentation in support of its assertion that vacation pay had, in fact, been paid;
- the Director was not satisfied that a letter, purporting to be notice of layoff, was in fact ever received by Mr. Janda; and
- the Director had clear evidence before her of the employer changing notations on cheques after they had been cleared through the employer's bank account; these alterations were such as to allegedly support the employer's position.

With respect to this latter point, I should say that I have reviewed copies of the altered cheques in question – copies of cheques presented as evidence by the employer and the original copies as provided by the employer's financial institution, Canada Trust. It would appear clear that the employer has engaged in an *ex post facto* attempt to alter documents in order to support its position that certain vacation pay and overtime payments were made to Mr. Janda. I consider that this evidence, at the very least, suggests an effort on the employer's part to deceive the Director by fraudulent means. It is hardly surprising, then, that the Director did not find the employer's other evidence (such as its assertion regarding the delivery of written termination notice) to be credible.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter be confirmed as issued in the amount of **\$9,315.11**, together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

**Kenneth Wm. Thornicroft,
Adjudicator
Employment Standards Tribunal**