

**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 -

High Mountain Tree Services  
("High Mountain")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** James Wolfgang

**FILE NO.:** 96/073

**DATE OF HEARING:** May 6, 1996

**DATE OF DECISION:** June 10, 1996

**DECISION**

**APPEARANCES**

Ranbir Singh Budial	High Mountain Tree Services
Balinder Singh Budial	Witness for High Mountain Tree Services
Kamal Jit Singh Parmar	Interested Party
Parminder Singh Parmar	Interested Party
Narinder (David) Tuli	Interested Party
Ian MacNeill Standards	Delegate of the Director of Employment
Majit Dhariwal	Translator

**OVERVIEW**

This is an appeal by Ranbir Budial and Jamie Brigden operating High Mountain Tree Services (“High Mountain”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET #000713 issued by the Director of Employment Standards on January 10, 1996. In this appeal High Mountain admits money is owed to their former employees but not the additional wages and overtime in the Determination. They state the rate charged for room and board was correct and they are entitled to deduct any personal items purchased by the Company on the employees behalf.

**ISSUE TO BE DECIDED**

Is High Mountain required to pay the outstanding wages, overtime, and vacation pay to the complainants? Is High Mountain entitled to deduct from wages owing; room and board and any personal purchases made by the Company at the employees request?

**FACTS**

This case falls under the Transitional and Consequential Provisions [Section 128(3)] of the *Employment Standards Act* 1995.

High Mountain is a silviculture company performing tree pruning. The Company had a contract with Western Forest Products in the Holberg area during August to November 1995.

Gurinder Singh Sandhu ("Sandhu") was employed as a tree pruner with High Mountain from August 1, to August 22, 1995. His rate of pay was \$10.00 per hour. He filed a complaint on October 16, 1995. The Determination CDET #000713 dated January 10, 1996 indicates he has total wages owing of \$2,580.36. He did not attend the hearing.

Kamal Jit Singh Parmar ("Kamal") was employed as a tree pruner with High Mountain from August 7, to September 4, 1995. He filed a complaint on November 23, 1995. The Determination CDET #000713 dated January 10, 1996 indicates his total wages owing are \$2,486.33.

Parminder Singh Parmar ("Parminder") was employed by High Mountain as a tree pruner, from August 7, to November 12, 1995. His rate of pay was \$10.00 per hour. He filed a complaint on November 24, 1995. The Determination CDET #000713 dated January 10, 1996 indicates his total wages owing are \$6,199.80.

Narinder ("David") Tuli was employed by High Mountain as a tree pruner. He was employed from August 30, to September 12, 1995. He left his employment due to an injury. His rate of pay was \$10.00 per hour. He filed a complaint on October 27, 1995. The Determination CDET #000713 dated January 10, 1996 indicates his total wages owing are \$1,282.32.

Gerry Renshaw was employed by High Mountain as a first aid attendant from October 11, to November 12, 1995. His rate of pay was \$80.00 per day. He filed a complaint January 4, 1996. The Determination CDET #000713 dated January 10, 1996 indicates his total wages owing are \$789.96.

The Crew were provided room and board at a commercial establishment while in Holberg.

## **ARGUMENTS**

A preliminary matter was raised prior to the hearing. It involved the complaint of Gerry Renshaw. Renshaw is since deceased and his claim has been resolved with the money being paid to his estate.

Ranbir Singh Budial ("Budial") took the position he was not allowed to properly defend his appeal. He claims he requested an adjournment which was denied by the Tribunal. He claimed his witnesses were working elsewhere and were not available at the time of the hearing.

High Mountain contends they had a sliding scale of wages based on productivity. The starting rate was \$10.00 per hour ranging to \$18.00 - \$19.00 per hour. Budial claims he had a large crew working in the Holberg area and the standard charge for room and board was \$15.00 per day. He claimed he had no other complaints. The Company gave cash advances to some employees and purchased various personal items for the employees at their request.

Budial claims the interested parties were hired at \$10.00 per hour.

Budial does not deny that High Mountain owes money to the interested parties but disagrees on the quantum. Budial accepts the record of hours worked as being correct. He agrees that overtime and annual vacation is payable. He claims the employees owe the Company for room and board and their personal items purchases by the Company.

Budial claims that four checks were issued to Parminder. The first was a personal check dated September 9, 1995 for the amount of \$375.06. The second for \$1,500.00, the third for \$1,200.00 and the final check in the amount of \$573.20. Further, he claims Parminder had authorized purchases totaling \$726.68 which he owes the Company.

Budial claims three checks were issued to Kamal. One in the amount of \$460.83, a second for \$1,100.00 and a third for \$52.52. He stated Kamal did not owe the company for any personal purchases.

Budial indicated an advance in the amount of \$900.00 was issued to Sandhu and he owes \$135.73 for personal items the Company purchased at his request.

The evidence of the interested parties was, with some exceptions, basically the same. They claim they were hired at \$12.00 per hour (\$12.50 per hour according to the written submission of Sandhu). They stated room and board was to be \$10.00 per day (with the exceptions of David who believed the rate was \$8.00 per day and Parminder who, in his written submission, said it was \$12.00 per day). They also stated other employees were paid more than \$10.00 per hour.

Kamal agrees he received three checks totaling \$1,613.35. He stated he was paid at \$11.00 per hour. He further believes he should be paid for the five days Western Forest Products shut down the High Mountain contract due to their failure to hire a first aid attendant.

David's position is he has received no wages and had no purchases.

Sandu agrees he received a check in the amount of \$900.00 and claims he had no personal purchases.

Parminder admits he received two checks totaling \$2,700.00. He stated a third check for \$375.06 from Budial was endorsed and given to his supervisor to cash as there was no place in Holberg for him to do so. His evidence was he did not receive the money. A fourth check for \$573.20 was post-dated to December 18, 1995 and a stop payment was made by Budial when he learned Parminder has filed a complaint.

Parminder agrees he purchased boots (\$77.52) and a rain suit (\$158.73) totaling \$236.25. He claims he authorized no other purchases.

## **ANALYSIS**

High Mountain complained their request for an adjournment to prepare their case was denied by the Tribunal. The Determination was issued January 10, 1996. The appeal by High Mountain is dated January 19, 1996. The hearing was held May 6, 1996, over three months from the date of the Determination. I believe that is a reasonable time to prepare a case and have the evidence gathered either through witnesses or by affidavits. I did allow evidence to be submitted following the hearing.

High Mountain did not present any payroll records of the interested parties or of any other employees to indicate their rate of pay.

Except for the testimony of Balinder Singh Budial, no evidence was presented by High Mountain to support their claim that room and board was charged to all employees, at \$15.00 per day. Balinder indicated he was in training on a day rate basis, that the rate for others was \$10.00 per hour and the room and board was \$15.00 per day for everyone including himself. He said everyone knew what the rate was.

The Employer was unable to produce any authorization for:

- (a) deduction for room and board or,
- (b) deductions for personal purchases

Without specific authorization or written agreement as provided in Section 21 or Section 22 of the *Employment Standards Act* the Tribunal has no authority to order recovery of costs from an employee's wages.

There clearly was an understanding between each of the former employees and High Mountain regarding room and board charges. It varies between employees but all admit there was to be a charge ranging from \$8.00 to \$12.00 per day, with \$10.00 per day being the predominate amount.

There does not appear to be any prior understanding regarding purchases that may have been made by employees.

There are other avenues available to the employer if they believe there has been a violation of an understanding reached between High Mountain and their former employees.

Kamal wants to be paid for the five days the job was shut down by Western Forest Products. The Tribunal has no jurisdiction to deal with that claim.

The issue of the check for \$375.06 to Parminder needs to be addressed. Parminder claims he never received the money from the check. Following the hearing, I received a statement from Holberg Old Time Service confirming the check had been cashed at their store by someone who purported to be Parminder Parmar. The canceled check was endorsed by Parminder and has a "for deposit only to account #..." That number matches the account of the store.

The store stated their policy is if a third party, such as the supervisor who was known to the store, had cashed the check they would require that person to also endorse the back of the check. There was no other signature on the photo copy of the check.

In the absence of any evidence to the contrary, I am forced to assume the check was cashed by Parminder.

No evidence was provided to indicate the check for \$573.20 was ever cashed although Budial denied that a stop payment had been put on the check. So in the absence of any proof I assume that check has not been cashed and that money is owing to Parmider.

Finally, the question of purchases by Parmider is limited to those that he agrees were authorized, therefore the boots and rain suit in the amount of \$236.25 is to be deducted from the wages owed to him.

Section 88 of the *Employment Standards Act* requires interest to be paid on all outstanding wages. It is left to the Branch to calculate the interest at the prescribed rate.

**ORDER**

Pursuant to Section 115 of the *Act* I order the Determination CDET #000713 be varied to include the changes indicated above.

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**James E. Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**  
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