

An appeal

- by -

Elaine Waldrif
("Waldrif")

- 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

TRIBUNAL MEMBER: David B. Stevenson

FILE No.: 2004A/81

DATE OF DECISION: July 13, 2004

ANALYSIS

Fundamentally, the variance in the Determination is based on findings of fact made by the Director from the information provided to her by the parties. As I stated in the original decision, albeit in another context:

. . . the Tribunal has said that the *Act* does not allow an appeal based on facts alone. Even before the amendments to Section 112 of the *Act*, an appeal was not viewed as a re-investigation of the complaint or simply an opportunity to have the Tribunal second guess the Director's decision and alter the result without showing a reviewable error. While, in some circumstances, errors of fact can be considered an error of law where there is no evidence to support the findings of fact made or a view of the facts has been taken that cannot reasonably be entertained based on the evidence, Waldrif has not shown any such error arises in this case.

The above comment applies also to the variance and substantially disposes of any potential examination by the Tribunal of the calculation made by the Director.

In the particular circumstances of this variance, the only aspect of it that may arguably raise any question of law relates to the Director's interpretation and application of the definition of the regular wage. The Director found that Waldrif's "normal or average weekly hours of work" was fifty hours and, based on that finding, applied the formula found in paragraph (d) of the definition of regular wage in Section 1 of the *Act* to establish an hourly rate. In my view, there was evidence to support the finding on "normal or average weekly hours of work" and there was no error of law in how the Director interpreted and applied the definition of regular wage to establish Waldrif's hourly rate.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated May 1, 2003 be varied to show an amount owing of \$2,555.36, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal