

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 -

Dennis Boyko
("Boyko")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Genevieve Eden

FILE NO.: 96/209

DATE OF DECISION: June 5, 1996

DECISION

OVERVIEW

This is an appeal by Dennis Boyko (“Boyko”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against Determination #CDET 001426 issued by the director of Employment Standards on March 1, 1996. The Determination found no wages owing to Boyko.

In this appeal, Boyko claims he is entitled to unpaid wages, plus an hourly rate differential, and mileage allowance.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is what wages, if any, are owing to Boyko.

FACTS

Boyko was employed as an Outreach Worker with The South Island Metis Nation from November 20 1995 to December 15, 1995.

The Determination states that, although Boyko’s last day of work was December 8, 1995, he was paid up to December 15, 1995. Thus, according to the Determination, while Boyko worked a total of 120 hours, he was paid a total of 160 hours at a rate of \$10.50 per hour amounting to an overpayment of \$420.00. While Boyko maintained his wage rate was to be adjusted to \$12.50 per hour retroactive to November 20, 1996, this was disputed by the employer, and in any event, the overpayment absorbed any wage adjustment plus vacation pay, and hence no wages were owing. Finally, the Determination stated that the *Act* does not provide payment for travel expenses.

Boyko appealed the Determination on March 25, 1996.

Boyko’s evidence is that he was hired without proper funding in place for his position and was subsequently terminated prior to the end of his contract. Given that the promised contract was not fulfilled, he contends he is owed wages in the amount of \$5,750.00 for 11 1/2 weeks representing the balance of his contract. He also maintains that his contract was \$12.50 per hour rather than the \$10.50 he was paid, and that he is entitled to mileage expenses in the amount of \$111.90.

R. Donahue, President of The South Island Metis Nation, submitted a letter written by Boyko dated December 16, 1995 confirming payment of wages to December 15, 1995 while

the last day worked was December 8, 1995, resulting in an overpayment of \$420.00. Vacation pay of \$50.40 and expenses of \$111.90 were deducted from the overpayment leaving a balance owing of \$257.70. Payroll stubs were submitted confirming that Boyko had been paid 160 hours at \$10.50 per hour from November 20, 1995 to December 15, 1995 for a total gross amount of \$1,680.00

ANALYSIS

Section 1 of the *Act* includes in its definition of “wages”:

- (a) salaries, commissions or money, paid or payable by an employer to an employee for work
- (b) money that is paid or payable by an employer as an incentive and relates to hours of work, production or efficiency

“Work” under Section 1 is defined as:

...the labour or services an employee performs for an employer whether in the employee’s residence or elsewhere

Thus, to be entitled to wages under the *Act*, an employee must perform labour or services for the employer. The evidence shows that Boyko worked to December 8, 1995 but was paid to December 15, 1995 for a total gross amount paid of \$1,680.00. He is only entitled to wages for the hours he worked, that is 120 hours. Even if the rate of \$12.50 per hour is applied to the 120 hours worked plus annual vacation pay, the overpayment exceeds the amount Boyko is entitled to. Finally, the definition of wages under the *Act* does not include mileage expenses.

I conclude there are no wages owing to Boyko.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination # CDET 001426 be confirmed.

Genevieve Eden
Adjudicator
Employment Standards Tribunal

GE:jel