

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 -

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Janox Fluid Power Ltd.
("Janox")

-of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

File No.: 97/883) 97/884) 97/885,
97/886 and 97/887

DATE OF DECISION: March 18, 1999

SUPPLEMENTARY DECISION

On April 12, 1998, the Tribunal issued a Decision on five appeals filed pursuant to Section 112 of the *Employment Standards Act* (the "Act"), by Janox Fluid Power Ltd. (Janox) of Determinations of a delegate of the Director of Employment Standards (the "delegate"), all dated November 6, 1997. The appeals were dismissed for the most part, but the calculations made by the Director were found to be incorrect and were referred back for further work. The amounts owed were recalculated and submitted to the Tribunal and to the parties for their response. Not surprisingly, there was a little in the way of consensus achieved from that exercise.

The Director says the following amounts are owed:

Dennis Berg	\$1299.70
John Dunleavy	\$1211.64
Pat Haroff	\$3374.02
Ken Larson	\$1357.61
Lance Matthew	\$1250.62

The total amount said to be owed by the Director is \$8493.59, including interest pursuant to Section 88 of the *Act*.

Janox says the following amounts are owed:

Dennis Berg	\$1299.00
John Dunleavy	\$(243.31)
Pat Haroff	\$2228.25
Ken Larson	\$206.58
Lance Mathew	\$711.44

The amounts stated by Janox include an adjustment of 0.5 hr for an overtime lunch break which Janox says the employees received but were not entitled to. This was raised by Janox and decided in the appeal decision BC EST#DOO6/98, where it is stated:

Janox bears the burden of persuasion in this case and has not shown that the 0.5 hour should not have been treated as time worked and included in the calculation of hours worked.

That issue will not be revisited.

Berg disagrees with the amount the Director and Janox says is owed. His dispute is based on two points: first, he worked 340.25 hrs. on the Fair Wage Project~ and second. that the amount of vacation pay deducted from his fair wage earnings included vacation pay on approx. 800 hours of earnings ,,,ith Janox that were not covered by the *Skills Development and Fair Wage Act* or the *Skills DeIelopment and Fair Wage Regulation*.

Dunleavy disagrees with the amounts for him. saying the Directors conclusion about the hours of work ""wrong and the amount he was owed should have been calculated on an hourly rate of \$25.00 an hour, which is what he was paid as foreman for Janox on the Project.

Haroff' and Larson agree with the amount the Director found to be owed to him and disagree with the amount Janox says each is owed.

It is difficult to glean from his response whether Matthew agrees with the amount produced *by* the Director or not. but he is justifiably frustrated by the length of time this matter has taken to reach a conclusion.

The Tribunal is not satisfied that the calculations made by the Director are completely ,1CCurate. The calculations do not correct errors made by Janox to the benefit of the employees. For example, on one Friday. Janox paid its employees 8 hours straight time and 2 hours at double time for a ten hour day. Under the *SDI'.J.Y A* and *regulations* the last two hours is payable at 1 1/2; times the hourly rates not two times the hourly rate. Taking all of the material filed by Janox and the employees, the Tribunal has concluded the following *amounts* are owed to each employee, exclusive. of interest

Dennis Berg	\$1199.25
John. Dunleavy	.\$684.75
Pat K1.roff	\$2717.23
Ken l.arson	\$1175.38
Lance Matthew	\$1458.71

The total amount owing is \$7235.32. exclusive of interest under Section 88 of the *Act*.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination be varied to show the amount owed as of \$7235.32, together with whatever interest has accrued pursuant to Section 88 of the *ACT*.

Dave Stevenson
Adjudicator
Employment Standards Tribunal