

**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 -

Design Planning Co-ordination Services Co. Ltd.  
("Design Planning")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 96/252

**DATE OF DECISION:** June 20, 1996

**DECISION**

**OVERVIEW**

This is an appeal by Design Planning Co-ordination Services Company Ltd. (“Design Planning”) under Section 112 of the *Employment Standards Act* (the “Act”), against Determination CDET# 001608. The Determination was issued by a delegate of the Director of Employment Standards on March 18, 1996.

The Determination found that Design Planning had not paid wages and benefits as required under the *Skills Development and Fair Wages Act*.

I have reviewed the appeal submitted by Design Planning and the information provided by the Director and have decided that the Determination should be varied.

**ISSUE TO BE DECIDED**

The issue to be decided in this appeal is whether Design Planning owes wages as set out in the Determination.

**FACTS**

The Determination sets out the total amount of wages including interest (\$24,738.82) payable by Design Planning to six employees:

Keijo Kohenen:	\$18,033.90
Jason Myers:	2,967.94
Mike Weiss:	210.28
Eric Harvey:	312.42
Ryan Wylie:	1,580.11
Donovan Brown:	<u>1,634.17</u>
	<u><b>\$24,738.82</b></u>

The Reason Schedule attached to the Determination states the following:

1. The named employees worked for the employer on a designated Skills Development and Fair Wage site.
2. The employer agrees that he did not pay the employees in accordance with the *Skills Development and Fair Wage Act*.
3. The employer has retained no payroll records to indicate that these employees were paid any wages. Therefore the calculations attached are based on the employer's records of hours, and calculated at the Skills Development and Fair Wage Act rate for Labourers of \$19.90 plus \$4.00 minimum benefits, for a total of \$23.90.
4. The complaint that caused this audit to occur was filed by Keijo Kohonen on February 22, 1996. This employee was employed as a journeyman carpenter. The employer agrees that the employee was not paid at the *Skills Development and Fair Wage Act* journeyman carpenter rate of \$21.62 an hour plus \$4.00 minimum benefits for a total of \$25.62 an hour. The employer has retained no payroll records to indicate that this employee was paid any wages.

Design Planning offers the following reason for its appeal:

- “Previously submitted copies of cancelled cheques should be deducted to reduce the claim.
- Keijo Kohonen has been paid \$4,500.00 on March 15, 1996 by the bonding company.
- Only information received concerning K. Kohonen was the determination for \$18,033.90”

In her reply to this appeal, the Director's delegate makes the following points:

- I have advised the employer on two occasions that I am willing to reduce the amount of the Determination. I have asked both the employer and the representative of the bonding company, AXA Pacific, that has taken over the site to provide me with the total of what has been paid to which employee. That information has not yet been made available to me. I will continue to pursue the information.
- The amount payable to Keijo Kohonen was calculated based on the attached calendar. The employer kept no records of the hours that this employee worked, so the calculation was based on the hours submitted by the employee. The attached calculation shows that the employee was paid \$9,063.03, earned \$32,253.53 and is owed \$23,190.50. The Determination was issued on the basis of the calculation

submitted by the employee's union. The employer submitted copies of cancelled cheques in the amount of \$9,063.03 subsequent to the Determination being issued. Also subsequent to the Determination being issued, the employee did receive funds from AXA Pacific, in the amount of \$4,500.00. The remaining amount is \$18,690.50 before interest. The employer has stated that he has additional canceled cheques that he will produce, that show that he paid additional moneys to this employee, but to date he has not done so.

**ANALYSIS**

Design Planning's appeal does not challenge any of the substantive facts or reasons that are set out in the Determination.

Section 8 of the *Skills Development and Fair Wage Act* states:

Fair wages owing under this *Act* are deemed to be wages for the purpose of the *Employment Standards Act*, and the collection, complaint and appeal procedures of that *Act* apply for the purpose of this *Act*.

The calculation Schedule for Keijo Kohonen showed a total of \$18,033.90 owing, based on the investigation conducted by the Director's delegate prior to issuing the Determination. Subsequent investigations by the Director's delegate show that the total amount owing to Kohonen is \$18,690.50 (a difference of \$656.60). Thus, the total amount of the Determination should be increased by that amount to \$25,395.42.

For all these reasons I conclude that Design Planning's appeal is without merit.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination CDET# 001608 be varied to show a total amount payable of \$25,395.42.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC:sf