

An appeal

- by -

Manhas Roofing Ltd.  
("Manhas")

- 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*

**ADJUDICATOR:** James Wolfgang

**FILE No.:** 2000/877

**DATE OF DECISION:** March 23, 2001

## DECISION

### OVERVIEW

This is an appeal by Manhas Roofing Ltd. (“Manhas”) under Section 112 of the *Employment Standards Act* (the “Act”) from a Determination of the Director of the Employment Standards Branch dated December 4, 2000. The Determination found Manhas had failed to pay Jeremy Lowley (“Lowley”) minimum wage and ordered Manhas to pay Lowley \$129.59. A penalty of \$0.00 was also applied.

### ISSUE TO BE DECIDED

Does Manhas owe Lowley minimum wage for the hours worked?

### FACTS AND ARGUMENT

Manhas operates a roofing business and employed Lowley from August 23, 2000 to August 28, 2000. Manhas claims Lowley told him he was an experienced roofer and had his own tools. Manhas states Lowley was not an experienced roofer and did not have tools. He claims if Lowley was an experienced roofer he would have been able to make in excess of minimum wage.

Manhas further claims Lowley had no transportation and Manhas picked Lowley up from home each morning and returned him each night and this time was included in the calculation of hours worked.

Manhas claims Lowley had signed a contract to work piecework at \$10.00 per square without minimum wage or overtime and therefore is owed nothing. The contract is hand written and states:

I agree to work with manhas roofina (sic) as pace working (sic) 10.00 per square.  
4/12 pitch 5/12 pitch 6/12 pitch new roof.

No time a half (sic) or over time (sic)

Aug. 23/00                      signed “Jeremy Lowley” and “Manjit Manhas” owner.

At the bottom of the contract document is an addition dated Jan 14/2001 and titled “Manhas Roofing Ltd”. It states:

3 bundles of shingles is one square.  
4 1/2 square = 45.00                      10.00 9 square  
9 1/2 hrs       = 70.00                      7.15 an hour  
signed “P?. Manhas”

Further, in addition to the signed contract Manhas claims he taped telephone conversations he had with Lowley which confirms the understanding Lowley would be paid \$10.00 for each 3 bundles of shingles he installed.

Lowley claims he was contacted by the Prince George Native Friendship Employment Centre who told him he would be working for Manhas Roofing Ltd. for \$10.00 per hour. On his complaint form to the Employment Standards Branch Lowley claims he did not understand the difference between \$10.00 per square and \$10.00 per hour.

Manhas claims Lowley signed the contract the first day of work. Lowley claims he was asked to sign the contract on his last day of work.

Lowley claims he worked 33.5 hours during his employment and received \$112.24, which worked out to \$3.35 per hour.

The delegate for the Director found that Lowley had not been paid minimum wage for the hours worked and ordered Manhas to pay \$129.59 including interest.

## ANALYSIS

The question before me is whether the written contract between Lowley and Manhas is valid and whether that can replace the provisions of the *Act*.

I accept there may have been a written contract between Lowley and Manhas for work to be performed on a piecework basis of \$10.00 per square. I also accept that an experienced roofer may have been able to earn more per hour than Lowley.

I question whether Lowley was an experienced roofer as he claimed. If he were he would have clearly known the difference between being paid by the “square” and being paid by the hour. However that is not the issue.

If Manhas was not satisfied with Lowley’s work he had an opportunity to correct it or terminate him. If, as Manhas claims, he drove him to work and back each day he would have been able to see the amount of progress or lack thereof Lowley was making. It is my belief Manhas was not concerned, as he believed the contract did not require him to pay Lowley minimum wage. By law that is not the case.

Section 4 of the *Act* states:

The requirements of this Act or regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69. (emphasis added)

Further, Section 16 of the *Act* states:

16. An employer must pay an employee at least the minimum wage as prescribed in the regulations.

At the time the minimum wage was \$7.15.

Manhas claims hours reported by Lowley include travelling time from his home to the work site and return. There is no evidence the delegate found a difference in the hours claimed to have been worked by Lowley and I will accept those as correct.

There is an obligation on an appellant to prove the Determination wrong. The delegate must have committed an error in fact or in law. Manhas has not supplied any evidence to the contrary, therefore the Determination is upheld.

## **ORDER**

In accordance with Section 115 of the *Act* the Determination dated December 4, 2000 is confirmed and Manhas is ordered to pay the amount of \$129.59 plus additional interest as per Section 88 of the *Act*.

***JAMES WOLFGANG***

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**James Wolfgang**  
**Adjudicator**  
**Employment Standards Tribunal**