

**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 -

John A. Mitchell  
("Mitchell")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 96/739

**DATE OF HEARING:** March 27, 1997

**DATE OF DECISION:** March 31, 1997

**DECISION**

**OVERVIEW**

The appeal is by John A. Mitchell (“Mitchell”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against a Determination of the Director of Employment Standards (the “Director”), an unnumbered letter decision dated November 26, 1996. Mitchell claimed that Ultimate Log Homes Ltd. (“Ultimate”) owed him overtime pay, vacation pay, and travel expenses and wages. The Determination advised Mitchell that the Employment Standards Branch does not have the power to collect travel expenses and in respect to his other claims, that the Director's delegate was unable to establish that moneys were owed the employee.

**APPEARANCES**

John A. Mitchell	On his own behalf
Brent McIvor	For the employer
absent	The Director's delegate

**ISSUES TO BE DECIDED**

At issue is the matter of whether the employee is owed travel expenses. At issue is the matter of whether overtime pay is owed the employee. There is no issue over regular wages or vacation pay. Through the course of the hearing it became evident that the employer had paid the employee his wages, had correctly calculated the amount of vacation pay earned by Mitchell, and had paid all but \$32 of the vacation pay. The employer paid the employee that money and the vacation issue was settled.

**FACTS**

Ultimate’s business is the construction of log buildings. Mitchell worked as a constructor of the buildings from November 11, 1993 to November 18, 1994 when he quit.

At first Mitchell’s work was in the Whistler area but on August 21, 1994 he travelled to Colorado for the purpose of erecting an Ultimate building for the Dinali Land Group (“Dinali”), an outfit based in the United States. Mitchell was Ultimate’s employee. His work in Colorado lasted until his return to Whistler in October of 1994. On returning to Whistler, he worked for Ultimate for a short while and then quit.

While working on the Dinali job, Mitchell worked with Dinali employees and supervised construction of the building. He kept a record of his hours of work and that record of hours was submitted to Ultimate for payment. Ultimate disputes the accuracy of that record as it indicates that 47 hours of daily overtime were worked. Ultimate says that only four hours of overtime were worked. As a way of settling the matter, the employer paid Mitchell for 47 hours of work at straight-time rates.

Ultimate billed Dinali for what Mitchell says is overtime. Dinali refused to pay. Brian Stall of Dinali gave as reason for the refusal, the fact that Mitchell worked with the Dinali crew, and travelled to and from the job site with a Dinali employee, yet a check of the time cards of the Dinali workers revealed that no overtime was worked except for two 10 hours days spent unloading logs.

While in Colorado, Mitchell was paid \$75 U.S. per day for expenses. The only bill he submitted to Ultimate for such travel expenses is a bill for 57 days. That bill was paid in full. The employee now claims that he should have billed for another six days of travel expenses.

## ANALYSIS

There is no provision in the *Act* for collection of travel expenses. However, I note that while the employee claims foul in that respect, the evidence is clear, the employer paid in full the only bill submitted by the employee.

The *Act* requires that work beyond 8 hours in a day, and beyond 40 hours in a week, be paid at overtime pay rates and it provides for the collection of overtime pay. But this matter is complicated by the fact that Mitchell was paid all overtime work but 47 hours which he claims to have worked in Colorado. Do the standards of the *Act* extend to work Mitchell's work outside of the Province? It may not, *Arland Benjamin Marchant*, BCEST (1996) No. D233/96.

In these circumstances, it is my judgement that the Act did not apply to Marchant's employment in Japan. As a matter of statutory construction, there is a **presumption against the extraterritorial application of legislation**. . . .

. . . Section 2 of the Act describes as one of the purposes of the Act "to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment." Section 119 speaks of the reciprocal enforcement of extraprovincial certificates. . . . (my emphasis)

Beyond noting the above, I need not pursue the matter further for no productive purpose would be served by it. As Mitchell presents matters to me, he fails to show how the conclusions of the Director's delegate are wrong in any way. And so, even if it were found that the work in Colorado is covered by the *Act*, there would be no varying of the Determination.

The Director's delegate on investigating the claims of Mitchell found that there was nothing to some of his allegations. I find that.

On the particular point of overtime, the delegate was unable to establish whether the many hours of overtime claimed by Mitchell were actually worked by him. Against Mitchell's assertion that he worked 47 overtime hours, are the assertions of Ultimate, and a person independent of Ultimate, Stall of Dinali, that only 4 hours of overtime were worked. The Director's delegate found nothing that allowed her to conclude with certainty that Mitchell was owed overtime pay and she made the decision that she did. It is the correct decision in my view.

In presenting matters to me, Mitchell has presented me with no hard evidence in support of his claim that the Determination is in error. I therefore confirm the Determination.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that the unnumbered Determination, John A. Mitchell v. Ultimate Log Homes, a decision dated November 26, 1996, be confirmed.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**

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