

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*

-by-

Peter Roofing Ltd.

(“Peter Roofing”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE NO.:** 96/102

**DATE OF HEARING:** June 17th, 1996

**DATE OF DECISION:** June 25th, 1996

## DECISION

### APPEARANCES

Sukhjinder S. Grewal	for Peter Roofing Ltd.
Acharanjit Dhesi	on his own behalf
Sharon A. Charboneau	for the Director of Employment Standards

### OVERVIEW

This is an appeal brought by Peter Roofing Ltd. (“Peter Roofing”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 000900 issued by the Director of Employment Standards (the “Director”) on January 25th, 1996. The Director determined that Peter Roofing owed Acharanjit Dhesi (“Dhesi”) the sum of \$2,062.08 on account of unpaid regular wages, statutory holiday pay and vacation pay.

This appeal was heard in Surrey, B.C. on June 17th, 1996. As neither Dhesi, his witness Mr. Satpaul Sohal, nor the principal of Peter Roofing, Pritam Pettar, were fluent in english, Mr. Hardeep Baraich, with the consent of all parties, acted as interpreter. The respective positions of the parties are as follows:

- Peter Roofing maintains that Dhesi was hired at a monthly salary of \$2,000 and that he has been fully paid for the one and only month that he worked. It is common ground that Dhesi has been paid \$2,000 (\$1,577.65 after deductions).
- Dhesi maintains that his period of employment extended beyond one month and that he was to be paid at a base hourly rate of \$13.

At the appeal hearing, Pritam Pettar testified as the sole witness for Peter Roofing; Dhesi testified on his own behalf. Dhesi also called a former employee of Peter Roofing, Satpaul Sohal, as a witness.

## FACTS

Peter Roofing is a roofing contractor that has been in business for over two years. The company operates primarily in the residential sector. Mr. Pettar, who is the principal operating officer of the company, testified that Dhesi worked for the firm as a “nailer” for one month and was paid the agreed salary of \$2,000. However, Peter Roofing, contrary to its statutory obligations, has no payroll records, or at least was unable to produce any such records at the hearing, to verify that:

- i) Dhesi was hired at a monthly salary of \$2,000;
- ii) Dhesi only worked for the one month period from April 16th to May 15th, 1995; and
- iii) Dhesi did not work any overtime during his tenure with Peter Roofing.

Dhesi, for his part, put into evidence a diary record of the total hours that he worked; the various job sites where this work was undertaken; and the number of hours (including overtime hours) that he worked each day. There is also uncontradicted evidence before me that Peter Roofing maintained some sort of log of the hours worked by each employee each day (both Dhesi and Sohal testified as to this matter; neither was challenged on cross-examination on this point). As I understand the evidence, at the end of each day, the employees at the job site would be picked up in a van and would indicate to the driver the number of hours they worked; this number would then be recorded, presumably for payroll purposes. I draw an inference adverse to the employer for its failure to produce this log at the appeal hearing.

## ANALYSIS

In this appeal hearing, the employer bears the burden of proving that the Determination was in error. The only witness to testify on behalf of the employer did not produce any employment or payroll records that would suggest the Determination was in error. Mr. Prittar was unable to say, from his own personal recollection, how many hours Dhesi worked, when he worked, or at which job sites he worked. It would appear that Prittar rarely, if ever, personally attended at the various job sites. Dhesi, on the other hand, put into evidence a complete record of hours worked and the site locations. His evidence as to the hours worked was not, in any way, undermined, on cross-examination.

There is no evidence before me that Peter Roofing paid Dhesi any statutory holiday pay or vacation pay pursuant to sections 45 and 58, respectively, of the *Act*.

In my view, the employer has wholly failed to meet its burden of showing, on a balance of probabilities, that the Determination is in error.

BC EST # D150/96

**ORDER**

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 000900 be confirmed in the amount of \$2,062.08 together with interest to be calculated by the Director in accordance with section 88 of the *Act*.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**