

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 -

Points West Printing Ltd.
("Points West")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Alfred Kempf

FILE NO.: 96/199

DATE OF DECISION: June 6, 1996

DECISION

OVERVIEW

This an appeal by Points West pursuant to Section 112 of the Employment Standards Act (the "Act") of Determination #001330 issued by the Director of Employment Standards on February 26, 1996. This appeal concerns the issue of whether vacation pay is payable to an ex-employee of Points West.

The appeal proceeded by way of written submissions.

ISSUE TO BE DECIDED

The only issue is whether there is any justification in the Act for Points West to withhold vacation pay because it believes that Mr. Paquette has taken time off in lieu.

FACTS

Points West operates a printing shop in Penticton. It employed Steve Paquette for approximately 11 months on a full time basis and later on a part time basis for two months.

After Mr. Paquette left the employ of Points West he made a complaint to the Branch seeking payment of vacation pay on his earnings during his period of full-time employment.

Points West says that it is not obliged to pay vacation pay since Mr. Paquette took excessive time off during his employment. There is no indication that Mr. Paquette's salary was reduced due to this time off. The employer did not keep any record of the number of hours taken off by Mr. Paquette.

Mr. Paquette says that he took three days vacation and this has been taken into account in calculating the Determination. Points West produced a letter sent to Mr. Paquette in early July 1995. It provides in part as follows:

The basis for your remuneration is salary, as such availability to perform your tasks is necessary. The current situation with respect to limited days and hours is not acceptable. Morning arrival should be no later than 8.00 a.m. and the days duration is based on producing a satisfactory level of finished product in order to stay ahead of deadlines.

Mr. Paquette concedes he took some time off during the day at times to attend to personal business but that he made such time up by working longer on other days.

ANALYSIS

Mr. Paquette had flexible hours in the sense that he could leave work if the projects were done. There was no requirement that he work 8 hours a day although there was a clear expectation on the part of both parties that he would work approximately 40 hours a week.

There was no agreement on the part of Mr. Paquette that his time off, if any, would be deducted from his vacation pay entitlement.

Points West's refusal to pay vacation pay can only be viewed as arbitrary since it has no record of the hours allegedly taken off by Mr. Paquette. Absent an agreement from Mr. Paquette Points West was not entitled to unilaterally classify time away from the workplace as paid vacation.

ORDER

Pursuant to Section 115 of the Act, I order that Determination #001330 be upheld.

Alfred Kempf
Adjudicator
Employment Standards Tribunal