

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Delores E. Lewis
("Lewis")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator:	Lorne D. Collingwood
File No.:	1999/35
Date of Hearing:	April 7, 1999
Date of Decision:	April 22, 1999

DECISION

APPEARANCES

Delores E. Lewis

On her own Behalf

OVERVIEW

Delores E. Lewis (“Lewis”) appeals, pursuant to section 112 of the *Employment Standards Act* (the “Act”), a Determination by a delegate of the Director of Employment Standards dated January 8, 1999. In the Determination, Karen Louise Reid and Donald Philip Antle are found to owe Lewis wages totalling \$107.15.

ISSUES TO BE DECIDED

What is at issue is the wage rate used for the purpose of the Determination’s calculations. The delegate found an agreement on pay which provides for \$250 a week or, roughly, \$7.15 an hour. Lewis says that the employer proposed pay of \$250 a week but agreed to pay \$10 an hour. And the appellant says that is what the employer did pay. The employer makes no submission on the appeal.

FACTS

Delores Lewis was employed by Karen Louise Reid and Donald Philip Antle for three weeks in August of 1998. Lewis’ job was to look after the employer’s children and do other work in their house.

Lewis started work on the 6th of August, and after starting work, Reid presented her with a “Memorandum” dated 07/08/98. That document set out the employer’s expectations with regard to the employment. Work was to be from 10:00 a.m. to 6:00 p.m., Monday to Friday, and pay was to be \$250 a week. The employer went on to explain, verbally, that Lewis would have an unpaid break of one hour each day, which was to be taken while the children were resting. That meant a 35 hour work week. To pay \$250 for 35 hours of work week is to pay \$7.14 an hour.

The delegate found that Lewis agreed to work for \$250 a week. But Lewis denies that she ever agreed to work for that amount of pay and, as the facts are presented to me, I find that there is no evidence to indicate that she did. What Lewis says is that the employer agreed to pay her \$10 an hour.

Lewis was paid \$905 by cheque dated the 21st of August.

The employer did not keep a record of hours worked. But the employee did and the delegate has found that it is both reliable and accurate. That record indicates that Lewis worked 104.5 hours to and including the 20th of August, and another 4 hours on the 21st. At \$7.15 an hour, the employee would have earned only \$850.86 in wages, including applicable overtime, for that 108.5 hours of work. When 4 percent vacation pay is added to that, the result is total earnings of \$884.89, still well short of \$905.

The employee tells me that Reid explained why she was paid \$905, and that it was done using her record of work. The record does appear to have been used for that purpose. It indicates pay of \$10 an hour. And the record indicates that the employer was of the view that Lewis worked only 90.5 hours to and including the 20th. $\$10 \times 90.5$ is \$905.

ANALYSIS

The employer paid Lewis \$905 on the 21st of August. It is extremely unlikely that the employer would have done that if the rate of pay were \$250 a week or \$7.15 an hour given that even the employee claims only 108.5 hours worked to and including the 21st. But the rate of \$10 an hour is fully consistent with the \$905 payment and all other evidence before me. Only that rate offers a satisfactory explanation for the \$905 payment. I am satisfied that there was an agreed rate of pay and that it is pay at \$10 an hour.

As the Determination reflects the rate of \$7.15 an hour, it is in need of revision. I find that Lewis earned regular wages and overtime pay of \$1,357.50. When 4 percent vacation pay is added to that, the result is total earnings of \$1,411.80. From that is subtracted the amount of wages paid, \$905, leaving a remainder of \$506.80.

It is \$506.80 that is owed Lewis, plus interest as the *Act* prescribes.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated January 8, 1999 be varied. Delores E. Lewis is owed \$506.80 in wages and vacation pay plus whatever interest is owed pursuant to Section 88 of the *Act*.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal