

An appeal

- by -

Cedar Rapids Enterprises Co. Ltd.
("Cedar Rapids")

- 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: M. Gwendolynne Taylor

FILE No.: 2001/19

DATE OF DECISION: April 4, 2001

DECISION

WRITTEN SUBMISSIONS RECEIVED BY:

Kim Gratton on behalf of Cedar Rapids Enterprises Co. Ltd. (“Cedar Rapids”)
R. A. Stea for the Director of Employment Standards (“Director”)

OVERVIEW

On December 11, 2000, a delegate of the Director of Employment Standards (the “Director”) issued a Determination against Cedar Rapids. This Determination awarded \$3,243.51 to Michael McNeil (“McNeil”), a former employee, for wages, banked time credits, an unauthorized deduction and interest.

Cedar Rapids appealed the Director’s determination stating as grounds that McNeil had no supervision, he submitted totally different time cards to Cedar Rapids and to the Director and McNeil has been paid everything owed to him.

ISSUE

Did the Director err in determining that Cedar Rapids owes McNeil for overtime, banked time and an unauthorized deduction.

THE FACTS AND ANALYSIS

Cedar Rapids is a logging and excavating company. McNeil worked for Cedar Rapids from January 1999 to December 13, 1999, as an excavator operator. In the investigation before the Director, he claimed that after mid May he was not paid overtime rates; that he was owed \$800 for banked time; and that Cedar Rapids twice recovered an amount of \$661.20 for rental of a CAT.

Kim Gratton replaced Patsy Cain as bookkeeper in May 1999. Gratton submitted that Cedar Rapids did not owe McNeil for overtime, banked hours or the CAT rental. She said the \$800 had been included in a cheque for \$1,100, dated June 4, 1999. She deducted \$661.20 from the pay period ending December 31 because she did not have any record of it having been recovered previously.

The Director noted that the cheque for \$1,100 had a notation “drag on pay” and found that it was an advance on wages and did not include the \$800. The Director also found that Cedar Rapids did not have authorization to deduct \$661.20 from wages. The Director contacted Patsy Cain who recalled McNeil having paid for the CAT rental.

With the appeal, Ms. Gratton included a Banked Time 1999 summary for McNeil. The Director submitted that Cedar Rapids had previously denied that the document existed. Ms. Gratton also submitted records of hours worked and cancelled cheques. Cedar Rapids did not include an analysis of these documents or suggest any conclusions that should be drawn from them.

On January 23, 2001, the Director met with Ms. Cain and Mr. McNeil and asked them to review the Banked Time 1999 document. Ms. Cain verified that she made some of the entries but either could not recall or questioned others and noted that at least one was not her handwriting.

The Director questioned the accuracy of the document and requested that Ms. Gratton provide him with the original. She indicated, on January 26 2001 that she would. To date, the Tribunal has not received the original or advice from the Director that Ms. Gratton forwarded it there.

FINDINGS

Cedar Rapids has provided minimal information with the appeal. Cedar Rapids has not indicated how the lack of supervision relates to the appeal. The main evidence submitted in support of the appeal appears to be the Banked Time 1999 document.

Given the evidence provided to the Director by Ms. Cain, the questionable accuracy of the Banked Time 1999 document, and the fact that Ms. Gratton has not responded with the original document, I find there is no support to the suggestion that the Director erred.

ORDER

I dismiss the appeal and confirm the Determination of the Director .

M. GWENDOLYNNE TAYLOR

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal