

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 -

Linda Lee
Protection Department at Northwood Pulp and Timber Ltd.
("Northwood")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/350

DATE OF DECISION: May 4, 2001

DECISION

OVERVIEW

This is an appeal by Linda Lee on behalf of the Protection Department at Northwood Pulp and Timber Ltd. (“Northwood”) under Section 112 of the *Employment Standards Act* (the “*Act*”) against a Determination Letter issued on May 21, 1996 by a delegate of the Director of Employment Standards. In this appeal Northwood claims their request for a variance to the banking of overtime should not have been denied.

The Director’s delegate determined that the request for a variance should be denied as the *Act* does not apply to the matter.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether the decision of the Director’s delegate is correct.

FACTS

The Determination Letter issued by the Director’s delegate states the following:

As the request you filed is regarding banking of overtime worked for a period of twelve months before having to use the time, which is not covered by the *Employment Standards Act* no action can be taken by the Branch in regards to your request.

In this appeal, staff and management of the Protection Department at Northwood want a variance which would allow them to bank overtime for one year instead of 6 months. They wish to retain a mutually beneficial arrangement between the employer and employees whereby employees can bank overtime for one year before it has to be paid out in cash or time. The 6 month period allowed for banking of over time is an administrative headache for the employer and it deprives employees of the right to use their banked time when it is most mutually convenient for all persons involved in the matter.

ANALYSIS

Section 42 of the *Act* states that money paid into the time bank must be paid out within 6 months of when it was put into the time bank. There is no provision under the *Act* which would allow for an extension of this 6 month requirement.

Section 73 of the *Act* gives the Director of Employment Standards the power to grant variances under Section 72 of the *Act*. Section 72 of the *Act* allows for variances of:

- (a) a time period specified in the definition of a “temporary layoff”;
- (b) section 17(1) (paydays);
- (c) section 25 (special clothing);
- (d) section 31 (3) (notice of a change in shift);
- (e) section 34 (minimum daily hours);
- (f) section 35 (maximum hours of work);
- (g) section 36 (hours free from work);
- (h) section 40 (overtimes wages for employees not on a flexible work schedule);
- and
- (i) section 64 (notice and termination requirement for group terminations).
- (j)

Section 72 of the *Act* does not allow for a variance of Section 42 (banking of overtime wages) of the *Act*.

Regardless of the reason for wanting a variance of the banking of overtime provisions, there simply is no provision under the *Act* which would allow for such a variance.

Section 4 of the *Act* does not allow non-unionized employees and employers to make any agreement or contract that violates any requirement of the *Act*. Consequently, an agreement to bank overtime beyond 6 months would be a violation of the *Act*.

I conclude, therefore, the Director’s delegate has not erred in her decision and this appeal must be dismissed.

ORDER

I order, pursuant to Section 115 of the *Act*, that the Determination Letter issued on May 21, 1996 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

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