

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 -

Ron Patch
Operating Cloverdale Sheet Metal
("Patch")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/310

DATE OF HEARING: June 18, 1996

DATE OF DECISION: May 4, 2001

DECISION

APPEARANCES

Ron Patch	for	Ron Patch operating Cloverdale Sheet Metal
Rick Romano	for	Ron Patch operating Cloverdale Sheet Metal
John Harper		on his own behalf
Lynne Egan	for	the Director of Employment Standards.

OVERVIEW

This is an appeal by Ron Patch operating Cloverdale Sheet Metal (“Patch”) against Determination No. CDET 002045 issued by a delegate of the Director of Employment Standards on April 23, 1996.

In the Reason Schedule attached to the Determination, the Director’s delegate states that Patch owes regular wages and vacation pay to John Harper (“Harper”) for the period March 6, 1995 to July 31, 1995. The Director’s delegate further states that Patch could not, or would not, provide records and, therefore, her calculations are based on information provided by Harper.

In this appeal, Patch claims that no wages are owed to Harper as he was paid in full.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is what wages, if any, are owed to Harper by Patch.

FACTS

Harper was employed by Patch as a Sheet Metal Worker from February 6, 1995 to July 31, 1995. During his employment, he received approximately \$6,060.00 in wages from Patch. What is in dispute is whether any further wages are owed to Harper.

According to Harper, his rate of pay was \$15.00 per hour for the period February 6, 1995 to March 3, 1995. He was paid in full for this period of time.

Harper stated that his rate of pay changed to \$500.00 per week effective March 6, 1995. He agreed to the change because his hours of work had been sporadic. He said that he

received some but not all his wages after March 6, 1995. Patch kept falling behind with the payments. Harper stated that he worked the hours and weeks which are listed on the Calculation Schedule attached to the Determination and is owed the amount calculated by the Director's delegate. The information contained in the Calculation Schedule is based on Harper's records.

According to Patch, he agreed to pay Harper \$15.00 per hour and not \$500.00 per week. Patch stated that Harper only came to work 1 - 2 days per week and he was always impaired. As well, Harper once disappeared for about three and one-half weeks, but Patch is not sure of the exact time when this took place. Patch stated that he does not drink and he submitted a letter from an acquaintance confirming this point and confirming that Harper is an abuser of alcohol.

Patch further stated that Harper claimed he had a drivers license, but did not; Harper damaged his truck which cost \$8,895.00 to repair; Harper was arrested at least once a month for drunk driving or driving without a license or insurance and would be kept in jail for 2 -3 days; and Harper stole the honour box worth \$118.00 and the plates on Cloverdale Sheet Metal's truck and disappeared for a week. In addition, Harper stole tools from the shop and tried to pawn them at Rodeo Pawn Brokers but the owner knew they were Patch's tools. Patch submitted a letter dated June 14, 1996 from Earl Tattersall of Rodeo Pawn Brokers which states that Harper came in to pawn some tools in 1995, which he didn't think belonged to Harper, and the owners of Cloverdale Sheet Metal said the tools belonged to them.

According to Patch, Harper also collected and kept money on jobs that belonged to Cloverdale Sheet Metal. Harper kept all the money on the Challenger Fish Boat job. On the Andreas job, Harper collected \$4,500.00 and only gave \$1,500.00 to Patch. On other occasions, Harper expected Patch to pay him for jobs that were not done on behalf of Cloverdale Sheet Metal (e.g. the Diamond Fast Food job).

At the hearing, Patch initially stated he had no records concerning Harper's hours of work. In cross examination he stated he did have records, but did not bring them to the hearing. In any event, he disagrees with the hours and wages calculated by the Director's delegate. It is Patch's position that Harper is a liar and has been paid in full. Harper's history of stealing from Cloverdale Sheet Metal confirms he is a liar and, and therefore, he should not be believed when he claims he is owed wages by Patch.

Patch called Rick Romano ("Romano") as a witness. Romano stated that he has worked for Patch on and off for two and one-half years. Romano said that he worked 4 - 12 hours per day, and his days of work varied. He saw Harper at the shop and, on lots of occasions, Harper was there at 6 a.m. until late at night and his hours of work were sporadic. Sometimes, Harper would be drinking and sometimes he would be doing nothing. He further stated that Harper, like himself, was not paid on a steady basis and sometimes they were paid late by Patch.

In reply to the various statements made by Patch, Harper said that Patch is a liar and his drinking problem is not worse than Patch's drinking problem. He stated that he was always on the job and it was Patch who was never at the shop. He admitted that he was involved in scraping a truck and he was arrested several times and kept overnight for failing to appear in court, but he was never kept for 2 - 3 days. He was never absent for three and one-half weeks, whereas Patch disappeared for one week. Furthermore, he was never drunk on the job. He admitted that he borrowed Patch's plates to go to a job, but he returned them the next day. He denied he pawned Patch's tools. He said he pawned his own tools as he was not getting paid regularly by Patch.

Harper agreed that he collected payments on jobs and he gave all the money to Patch, except on the Challenger Fish Boat job. On this job he collected and kept \$600.00 to \$800.00 and told Patch not to pay him for that week. Harper stated that most of the payments he collected were in the form of cheques made payable to Cloverdale Sheet Metal and therefore were of no value to him. In one case involving cash, he collected \$1,500.00 and gave it to Patch. In other cases involving the collection of smaller amounts of cash (\$25.00 to \$100.00), he sometimes used this money to pay for expenses such as gas and supplies because Patch never gave him or his helpers any money for expenses. Harper denied he kept any money on the Andreas job as he only collected \$1,500.00, and he stated that he didn't get the Diamond Fast Food job through Patch.

ANALYSIS

In this appeal, Patch bears the burden of proving that the Determination issued by the Director's delegate is in error. I am not persuaded, on a balance of probabilities, that Patch has shown that the Determination is in error.

I am satisfied that, contrary to his statutory obligations, Patch has no records concerning Harper's days and hours of work. Harper, on the other hand, has a record of his hours of work and rate of pay. Patch and his witness did not provide sufficient information to establish that Harper's evidence concerning his hours of work and rate of pay was inaccurate. Patch and his witness did not provide any specific information about Harper's hours of work. Although Patch's witness stated he sometimes saw Harper drinking and doing nothing, he also admitted he saw Harper at the work site all day on lots of occasions. Furthermore, Patch's witness said it was not uncommon to be paid late by Patch. Finally, no proof was provided to substantiate Patch's claim that Harper only worked 1-2 days per week and that he was absent from the work site on various occasions and stole money from the company.

For the above reasons, I conclude that Harper is owed the wages and vacation pay as calculated by the Director's delegate.

ORDER

I order pursuant to Section 115 of the *Act* that Determination No. CDET 002045 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

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