

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 -

Willow Spring Construction (B.C.) Ltd.

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/112

DATE OF DECISION: April 17, 1997

DECISION

OVERVIEW

This is an appeal by Willow Spring Construction (B.C.) Ltd. ("Willow Spring"), under Section 112 of the *Employment Standards Act* ("the Act"), against a Determination which was issued by a delegate of the Director of Employment Standards (the "Director"), on January 30, 1997. The Determination requires Willow Spring to pay \$434.83 plus interest on account of unpaid vacation pay owed to Jim Bateman ("Bateman").

ISSUE TO BE DECIDED

Is Bateman entitled to be paid vacation pay in the amount set out in the Determination?

FACTS

The Determination gives the following reasons for finding that Willow Spring owes vacation pay to Bateman:

The investigation revealed no vacation pay has been paid according to payroll records submitted. The Employer stated Jim Bateman did not work all the hours as claimed but had no records to prove when he did not work. Nor did the Employer adjust the pay at the time when the time off was taken. The Employer withholds wages illegally as pursuant to section 21(1) of the *Employment Standards Act* by refusing to pay vacation pay.

The appeal submitted by Paul Christenson on behalf of Willow Spring does not deny that vacation pay is owed to Bateman. Rather, the appeal argues that the Determination is "...incorrect because Mr. Bateman had breached his employment agreement, thereby forfeiting his rights as an employee." The appeal also states:

I refused to pay his holiday time on two accounts;

- 1) he had falsified his time sheet and in fact had taken time off by not showing up for work; and
- 2) he breached his employment agreement by working for two competing firms at the same time without authorization.

ANALYSIS

Section 58(1)(a) of the *Act* requires an employer to pay to an employee vacation pay amounting to "...at least 4% of the employee's total wages..."

Section 58(3) requires that any vacation pay to which Bateman was entitled when his employment was terminated by Willow Spring must be paid to him within 48 hours of his employment being terminated.

Section 21(1) of the *Act* states:

Except as permitted or required by this *Act* or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.

Section 63(3)(c) allows an employer to terminate an employee's employment for "just cause" without the payment of compensation for length of service. However, even in those circumstances where an employer has "just cause" to dismiss an employee, the employer is not removed from the requirement to pay vacation pay (as set out in Section 58 of the *Act*).

I hasten to add that I make no finding concerning the question of whether or not Bateman's employment was terminated for "just cause". My finding that Bateman is entitled to vacation pay under Section 58 does not depend in any way on the question of whether "just cause" existed for his dismissal.

I find that Willow Spring's appeal of this Determination is unfounded for the reasons set out above.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal