

**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 -

G. Douglas Layzell

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** John M. Orr

**FILE No:** 1999/117

**DATE OF HEARING:** April 19, 1999

**DATE OF DECISION:** April 22, 1999

## DECISION

### APPEARANCES

G. Douglas Layzell	On his own behalf
Rudy Schmidt	On behalf of Humpback Valley Campground Ltd
Ron Corrigan	Delegate of the Director

### OVERVIEW

This is an appeal by G. Douglas Layzell ("Layzell") pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination (File No. 024-600) dated February 04, 1999 by the Director of Employment Standards (the "Director").

Layzell was employed by Humpback Valley Campground Ltd ("Humpback") during the summer of 1997 as a campground manager. For 6 months of this time his salary was subsidized through a Federal Government grant. After his employment ended Layzell complained that he had not been paid properly for hours worked including overtime. There was an issue regarding the proper rate of pay. The Director found that Layzell was entitled to certain wages (\$2,073.73) based on a rate of pay calculated in accordance with the definition of "regular wage" in the *Act*. A substantial portion of the amount found to be due and payable was payment for overtime and statutory holidays.

Layzell appealed on the grounds that the Director was wrong to calculate the wage rate on this basis as there was sufficient evidence to find an hourly rate in excess of the "regular wage" as set out in the *Act*.

### ISSUES TO BE DECIDED

The issue to be decided in this case is whether there was clear evidence of an hourly rate in excess of the rate as determined by the Director.

### THE HEARING

This Tribunal has held that it has a wide latitude to determine how to conduct an appeal, *World Project Management Inc*, BC EST #D134/97. In this case I commenced by asking each of the parties certain specific preliminary questions. I assured the Parties that these preliminary questions were without prejudice to the appeal hearing.

I asked the Director's delegate to explain carefully how he had arrived at the wage rate in his Determination. I also asked whether the delegate had considered that Layzell may have been a "manager". The delegate indicated that the issue of manager status was not included in the determination.

I asked Layzell whether he was hired as the campground manager and he advised that he was but that he had mixed duties. There was a letter of settlement, written by Layzell, submitted by Humpback which indicated that on July 12, 1997 a settlement of outstanding issues was reached and it set out that he would be paid \$400.00 per week (40 hours @ \$10.00 per hour). Layzell agreed that he had been paid this amount in full. He also confirmed that he had recently received and cashed a cheque from Humpback in the amount of \$2,073.73 as set out in the Determination.

I reviewed with the Parties the provisions of the *Regulation* with regard to the payment of overtime and statutory holidays for "managers". Mr Schmidt on behalf of Humpback indicated that he was satisfied with matters as they were and that he was not seeking repayment of any of the money paid to date. I then allowed the parties some time to consider their positions.

After due consideration Layzell stated that he wished to withdraw his appeal.

Under the circumstances I will confirm the Determination and note that it has already been paid in full.

## **ORDER**

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

**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**