

An appeal

- by -

Keltine Transport  
(the “employer”)

- 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:** Sheila McDonald

**FILE No.:** 2000/660

**DATE OF HEARING:** January 25, 2001

**DATE OF DECISION:** April 18, 2001

## DECISION

### APPEARANCES:

Mr. Doug Buss	The Employer
Mr. Randy Fiddler	The Employee

### OVERVIEW

An appeal was brought forward by Keltine Transport Inc. appealing the Determination issued by Mr. David McDowell, a delegate of the Director of Employment Standards (the “Director”) on September 1, 2000 under file number 054-250 (the “Determination”). At the hearing Mr. Doug Buss gave oral evidence as the employer, and Mr. Randy Fiddler gave oral evidence as the employee.

### THE DETERMINATION

The Director determined that Keltine Transport Inc. had contravened the provisions of Part Four, Section 34(2), Section 36(1), Section 40(1) and (2), Part Five, Section 44 and 45 of the (*the Act*). The Director found that Mr. Randy Fiddler was owed \$877.45 in wages, plus \$27.33 interest pursuant to Section 88 of the *Act* for a total of \$904.78. The Director further found that Mr. Randy Fiddler was not a “long distance truck driver” in accordance with the *Act* and *Regulation*. He found that Mr. Fiddler’s base was Prince Rupert, and Mr. Fiddler normally drove less than 160 km from Prince Rupert. On two occasions Mr. Fiddler drove to Vancouver and was paid as a “long distance truck driver” for those periods. The delegate accepted the time cards provided by the employer as being a correct representation of Mr. Fiddler’s hours of work with the exception of the two Vancouver trips. For the first trip to Vancouver on March 13/14/15, 2000, the Director determined that Mr. Fiddler worked 13.3 hours per day. For the second trip to Vancouver on March 19/20/21/22, 2000, the Director determined that Mr. Fiddler worked 10 hours per day.

The Director further determined that Mr. Fiddler was owed overtime in accordance with the *Act*. The time cards provided by the employer showed that Mr. Fiddler worked in excess of 8 hours per day on numerous occasions. In addition, the delegate found there was an occasion when Mr. Fiddler did not receive 32 consecutive hours free from work in a week, and other occasions when Mr. Fiddler worked in excess of 40 hours in a week. The delegate also determined that Mr. Fiddler was owed statutory holiday pay for Christmas Day 1999, and New Years Day 2000. Lastly, the Director determined that Mr. Fiddler was entitled to a minimum of 4 hours pay for eleven days that he worked less than 4 hours.

## ISSUES

There are five issues to be determined:

- a) Is Mr. Fiddler a long distance truck driver as defined under the *Act*?
- b) What were Mr. Fiddler's hours of work for the two trips to Vancouver?
- c) Was Mr. Fiddler entitled to overtime in accordance with the *Act*, and if so what amount is he owed?
- d) Was Mr. Fiddler entitled to statutory holiday time for Christmas Day 1999 and New Years Day 2000?
- e) Was Mr. Fiddler entitled to minimum daily hours?

## EMPLOYERS EVIDENCE

Mr. Doug Buss said that Mr. Fiddler was not a full time employer of Keltine Inc. He said that Mr. Fiddler had told him he would do anything to make a living. Mr. Buss said that he had not guaranteed Mr. Fiddler any ongoing work but had told Mr. Fiddler that he was bidding on a new contract and if he got the contract he would be willing to train Mr. Fiddler to replace himself as a driver. He said that at no time had he offered Mr. Fiddler a regular job, however, occasionally he had work for him. He said on the second trip to Vancouver Mr. Fiddler blew up and quit the job in Vancouver. He told Mr. Buss he was done. After that he said he was not able to reach Mr. Fiddler and he lost a back haul. He said Mr. Fiddler requested severance pay but he told him no because Mr. Fiddler had quit. He said that Mr. Fiddler and he had agreed that Mr. Fiddler would be paid \$700 per trip to Vancouver as that was his past practice. He further stated that he was not in the habit of checking time cards and did not like to work that way. He stated that if he had looked at his time cards and saw that Mr. Fiddler was only working for one hour he would have had a discussion with him. He stated that he found some of the hours reported on Mr. Fiddler's time as suspect. Mr. Fiddler had said he was washing the truck, but Mr. Buss stated that he does not pay his drivers to work on his truck.

## EMPLOYEES EVIDENCE

Mr. Fiddler stated that Mr. Buss had phoned him and asked him to drive for him. He said that Mr. Buss said that he would pay him cash but Mr. Fiddler said he wanted to be on the books. He said he came in every morning at 8 am and tried to keep busy till noon. He stated that Mr. Buss had him fixing the truck everyday and the truck was spotless. He stated that there was no discussion about a back load when he went to Vancouver the second time. He stated that he wanted to be paid what he was entitled to under the law.

## THE FACTS AND ANALYSIS

The first issue is whether Mr. Fiddler was a long-distance truck driver. Based on the evidence Mr. Fiddler does not meet the definition of a long-distance truck driver under the *Act* which states a “long-distance truck driver” means a person employed to drive a truck normally 160 km or more from their base. Mr. Fiddler only drove to Vancouver twice during his employment with Keltine.

The second issue was what Mr. Fiddler’s hours of work were when driving to Vancouver. The Director’s calculation of the hours of work for Mr. Fiddler as outlined in the Determination are a reasonable calculation. The employer does not offer any evidence to the contrary other than to say he has made the trip in 17 hours himself.

The third issue is whether given Mr. Fiddler’s time cards he was entitled to overtime in accordance with the *Act*. The time cards were provided by the employer and the Director accepted them as a correct representation of Mr. Fiddler’s hours of work. In his oral evidence the employer stated he was not in the habit of checking the time cards, therefore, there is no reason to doubt the accuracy of the time cards. The Director entered the hours of work from the time cards into a computer program that applies the *Act* and found that overtime was owed. I find no evidence to question that finding.

The fourth issue was whether Mr. Fiddler was entitled to statutory holiday pay for Christmas Day 1999 and New Years Day 2000. The Director found that he was entitled. This does not appear to be in dispute anymore as the employer states in his October 31, 2000 submission to the Tribunal “as I explained before I was not aware he wasn’t paid for Christmas, Boxing Day and if brought to my attention would have been rectified”. The employer has agreed in my opinion, that two days statutory holiday pay is owed.

The fifth issue is whether Mr. Fiddler is entitled to minimum daily wages. The time cards as submitted by the employer show that Mr. Fiddler worked 11 days of less than 4 hours. The employer did not present any other verbal or written evidence that these time cards are not correct. In that case I agree with the Director’s findings that Mr. Fiddler is entitled to a minimum of four hours pay at the regular wage in accordance with section 34(2)(a) of the *Act*.

## ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed.

**SHEILA MCDONALD**

**Sheila McDonald**  
**Adjudicator**  
**Employment Standards Tribunal**