

An appeal

- by -

Catherwood Towing Ltd. and Michael Lindahl
("Catherwood" and "Lindahl", respectively)

- 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 (as amended)

TRIBUNAL MEMBER: David B. Stevenson

FILE No.: 2005A/142 and 2005A/159

DATE OF DECISION: November 15, 2005

DECISION

SUBMISSIONS

Ervin S. Mihalicz	on behalf of Catherwood Towing Ltd.
Michael Lindahl	on his own behalf
Sharn Kaila	on behalf of the Director

OVERVIEW

1. This decision addresses two appeals filed under Section 112 of the *Employment Standards Act* (the “*Act*”) of a Determination made by a delegate of the Director of Employment Standards (the “delegate”) on July 28, 2005. The Determination considered a complaint filed by Michael Lindahl (“Lindahl”) against Catherwood Towing Ltd. (“Catherwood”) and found the *Act* had not been contravened and no wages were owing.
2. Catherwood has appealed the Determination on the basis the delegate failed to observe principles of natural justice in making the Determination. Catherwood seeks to have the Tribunal change some of the findings and calculations made by the delegate in the Determination. As well, Catherwood wants the question of whether Lindahl was a manager under the *Act* decided.
3. Lindahl has appealed the Determination on the same ground and also wants the Tribunal to change some of the findings and calculations made by the delegate in the Determination.
4. The Tribunal is satisfied these appeals can be decided on the written submissions of the parties.

ISSUE

5. The issue is whether Catherwood or Lindahl have demonstrated any valid ground for an appeal of the Determination.

THE FACTS

6. The only relevant fact relating to these appeals is found in the following excerpt from the Determination:

The parties [Catherwood and Lindahl] agreed that Lindahl’s salary was \$6500.00 per month. They further agreed that this salary was based on a 9 hour work day (less ½ hour lunch) 5 days per week.
7. Using that fact, the delegate calculated Lindahl’s “regular wage” according to the definition of that term in Section 1 of the *Act*, leading to the finding that Lindahl had been compensated by Catherwood for all wages earned, including overtime and statutory holiday pay.

8. In its appeal, Catherwood does not say the above excerpt from the Determination is wrong, but says only, “Our understanding is that the salary was based on a 9 hour work day.” They also submit that Catherwood was hired for a nine hour work day.
9. In his appeal, Lindahl says that while he did agree as stated in the Determination, on reflection he now disagrees with a blanket reduction of ½ hour a day, every day, for lunch.
10. In response to the appeals, the delegate affirms the fact that both parties agreed to the hours of work during the complaint process and agreed to reduce the actual hours worked to account for the ½ hour lunch break.

ARGUMENT AND ANALYSIS

11. It is unnecessary to expend any time considering the arguments of the respective appellants. It is sufficient to say that the arguments of both parties is entirely dependent on their being allowed to resile from the agreement made during the complaint process to base Lindahl’s work week on a 9 hour day, less ½ hour for lunch.
12. If it is not already apparent, it should be noted that this agreement represented a compromise of the respective positions of the parties on Lindahl’s hours of work.
13. There is nothing in any of the material which suggests there was no such agreement or that the agreement was improperly coerced from the parties. Neither of the parties have provided any good reason why the Tribunal should allow them to back away from the agreement. Based on the submissions, it appears Lindahl’s appeal on this point arises from second thoughts about his agreement - probably coming after seeing the result of his agreement on his complaint. Catherwood’s appeal on this point appears to be based on nothing more than the possibility of Lindahl filing a successful appeal.
14. I should point out that for the same reason Catherwood’s appeal also asks the Tribunal to decide the issue of whether Lindahl was a manager under the *Act*. That issue was not addressed by the Director as it was not considered necessary to a disposition of the complaint. I would address that aspect of the appeal if I found Lindahl’s appeal had any merit. Otherwise, I find no error in the response of the Director on that issue.
15. One of the purposes of the *Act*, stated in paragraph 2(d), is to provide fair an efficient procedures for resolving disputes involving the application and interpretation of the *Act*. Having parties agree to the factual framework within which the dispute will be decided is an appropriate method for achieving the desired efficiency. From the Tribunal’s perspective, we would not lightly interfere with initiatives that achieve an efficient final resolution of a complaint.
16. For the above reasons, the appeals are dismissed.

ORDER

17. Pursuant to Section 115 of the *Act*, I order the Determination dated July 28, 2005 be confirmed.

David B. Stevenson
Member
Employment Standards Tribunal