

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 -

Mainland Demo Contracting Ltd., Formerly Known as Dhaliwal Developments Ltd.
("Mainland")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 96/312

DATE OF HEARING: July 15, 1996

DATE OF DECISION: July 16, 1996

DECISION

OVERVIEW

This appeal is by Mainland Demo Contracting Ltd. ("Mainland"), formerly known as Dhaliwal Developments Ltd., pursuant to Section 112 of the *Employment Standards Act* ("the Act") against Determination # CDET 002020 issued by the Director of Employment Standards (the "Director") on April 19, 1996. The Determination was issued as a result of a complaint by Gurminder Singh Dhatt ("Dhatt"), a former employee of Mainland, and is for wages, vacation pay, statutory holiday pay and overtime pay in the amount of \$3,450.98. Mainland is of the view that the Determination is in error.

APPEARANCES

Darshan Dhaliwal	For Mainland
Gurminder Singh Dhatt	On His Own Behalf
Wayne Mackie	For the Director

FACTS

Dhaliwal Developments employed Dhatt as a truck driver.

The complaint by Dhatt was filed in January of 1996. Determination # CDET 002020 is based solely on information provided by Dhatt, the employer not making records available to the investigating Employment Standards Officer. On the basis of that information, Dhatt was understood to have been employed from December 20, 1994 to September 20, 1995.

On hearing from the parties, it was learned that in fact Dhatt's employment by Dhaliwal Developments was terminated in April of 1995, he leaving in order to start his own trucking business at that time. Dhatt was then re-hired by the Dhaliwal brothers, now operating Mainland, for work in the month of September, 1995.

Dhatt's claim was for wages, overtime, and vacation pay relating to work in September of 1995 but it was also for vacation pay, statutory holiday pay and overtime pay said to be due for work prior to his leaving Dhaliwal Developments in April, 1995.

THE ISSUES

Given establishment of the fact that Dhatt's employment was terminated in April, 1995, as the Director's representative points out, Dhatt's claim for vacation pay, statutory holiday pay, and overtime prior to his leaving Dhaliwal Developments in April, 1995 was out of time at the time of filing, it not arriving within the six month period allowed by Section 74 (3) of the *Act*.

The matter of wages, overtime and vacation pay owing as a result of work in September, 1995 remains.

SETTLEMENT

The issues having been reduced to the matter of what was owed as a result of work in September, 1995, and various facts having come to light as the parties made their submissions, it was suggested that the parties might want to discuss settlement of their remaining differences. The parties expressed an interest in doing so and with that I adjourned the hearing and stepped outside, leaving the parties with the assistance of the Director's representative, Wayne Mackie. After some time I was asked to return and Mr. Mackie reported matters settled.

ORDER

WHEREAS it has been agreed that Mainland Demo Contracting Ltd. shall deliver forthwith to Mr. Mackie, a cheque made payable to Gurminder Singh Dhatt, in the amount of \$637.50, as a way of settling their differences,

AND WHEREAS I am satisfied, based on the submissions of the parties, that the terms of settlement are not contrary to the *Act*, or Regulations,

PURSUANT TO SECTION 115 OF THE *ACT*, I order that the Determination # CDET 002020 be varied so that it reflects the above finding in respect to issues and the amount that is owed Dhatt, that now being \$637.50.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal
LDC:jel