

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 -

Clint Heichman operating as Blue Ridge Ranch
("Blue Ridge")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 97/39

DATE OF HEARING: April 14, 1997

DATE OF DECISION: April 17, 1997

DECISION**APPEARANCES**

for the appellant:	no one appearing
for the complainant:	in person
for the Director:	Ken Copeland

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") by Clint Heichman operating as Blue Ridge Ranch ("Blue Ridge") from a Determination, Number CDET 005032, dated December 23, 1996, by a delegate of the Director of the Employment Standards Branch (the "Director"). The delegate concluded Blue Ridge had contravened Section 15, Section 23 and Section 28 of the *Act* in respect of the employment of Peter Guthrie ("Guthrie") and ordered payment of \$1,807.00. Blue Ridge failed to appear at the hearing, although notice was sent and received by them.

ISSUES TO BE DECIDED

There are three issues raised by the appeal: first, whether the hours of work claimed by Guthrie are accurate; second, whether the wages payable to Guthrie may be adjusted by the value of accommodation provided to him by Blue Ridge; and, third whether Blue Ridge was entitled to deduct a damage deposit for the accommodation from Guthrie's pay.

FACTS

Blue Ridge is a ranch operated by Clint Heichman in the hills west of Lillooet, British Columbia. Guthrie was hired by Blue Ridge as a ranch hand and started work May 3, 1997. On May 23, 1996, Guthrie was injured on the job. He attempted to continue to work but the injury forced him to resign his employment on June 6, 1996.

When he was hired, he was told the job paid \$1200.00 a month to start and he would be given the use of a house on Mr. Heichman's property. He was told, in respect of the house, he would be required to pay the hydro-electric costs. There was a deduction of \$45.00 from the wages payable for the pay period ending May 31, 1996. Guthrie has not sought any remedy in respect of this deduction. He accepts this charge as part of his agreement with Mr. Heichman. There was, however, an additional deduction from the wages payable of \$100.00, described on the pay slip as "part damage deposit". From the material on file this amount was intended to be part of a damage deposit Mr. Heichman sought to secure on the house provided to Guthrie. There was no agreement from Guthrie to deduct this amount.

Guthrie kept a daily record of the hours he was away from the house. The daily record notes the time he left the house to go to work and the time he returned to the house. An adjustment was made by the delegate to that daily record, for travel and lunch break, of one hour a day. The resulting calculation credited Guthrie with a total of 338 hours worked between May 3 and June 6, 1996. Blue Ridge did not keep a payroll record for Guthrie, as required by Subsection 28(1) of the Act, and no other record of hours was provided to the delegate during the investigative stage. In the appeal process, Blue Ridge did submit a record of the hours worked by Guthrie. It was a daily record maintained in a similar manner to Guthrie's, on a calendar. It credited Guthrie with a total of 312 hours worked between May 3 and June 6, 1996.

ANALYSIS

The burden of persuasion on the issue of the hours of work calculation made by the delegate is on Blue Ridge. Their failure to appear means they have failed to meet that burden. The appeal on the hours of work issue must be dismissed.

The answer to the issue of whether the wages payable to Guthrie may be adjusted by the value of the accommodation provided to him by the employer lies in whether the definition of "wages" in the Act can be interpreted to include the value of the accommodation where it is provided by the employer. Section 1 of the Act says, in part:

"wages" includes

- (a) *salaries, commissions or money, paid or payable by an employer to an employee for work,*
- (b) *money that is paid or payable by an employer as an incentive and relates to hours of work, production of efficiency,*
- (c) *money, including the amount of any liability under section 63, required to be paid by an employer to an employee under this Act,*
- (d) *money required to be paid in accordance with a determination or an order of the tribunal, and*
- (e) *in Parts 10 and 11, money required under a contract of employment to be paid, for an employee's benefit, to a fund, insurer or other person,*

but does not include

- (f) gratuities*
- (g) money that is paid at the discretion of the employer and is not related to hours of work, production or efficiency,*
- (h) allowances or expenses, and*
- (i) penalties;*

While the definition is inclusive, rather than exhaustive, it would be unreasonable to extend the definition to include the value of a gratuitous benefit provided by the employer. That conclusion is reinforced by Section 20 of the *Act* which requires all wages to be paid in negotiable Canadian currency. Such an interpretation would also destroy the certainty of the minimum wage provisions of the *Act* and would seriously undermine administration of the annual holiday pay provisions, the length of service provisions and other parts of the *Act* that depend on finding an hourly rate in assessing whether there is compliance or the remedy in the absence of compliance. The appeal fails on this issue and Blue Ridge may not take into account or set off the value of the accommodation provided to Guthrie with the job.

The final issue is whether Blue Ridge was entitled to deduct from Guthrie's wages an amount to be held as security deposit on the accommodation he was provided by the employer. Section 21 of the *Act* is clear: *an employer may not directly or indirectly withhold, deduct or require payment of all or part of an employee's wages for any purpose and may not require an employee to pay any part of an employer's business costs, except where allowed by regulation.* There is nothing in the *Act* which allows an employer to withhold a security deposit from an employee's wages. The appeal on the security deposit issue fails on the clear wording of the *Act*.

ORDER

Pursuant to Section 115 of the *Act*, I order Determination Number CDET 005032, dated December 23, 1996, be confirmed.

David Stevenson
Adjudicator
Employment Standards Tribunal