

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 -

Crosby Fire & Forest Ltd.
("CFF")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson
FILE NO.: 98/62
DATE OF HEARING: April 22, 1998
DATE OF DECISION: May 6, 1998

DECISION

APPEARANCES

for the appellant: Terry Crosby
for the individual: in person

OVERVIEW

This decision involves an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Crosby Fire & Forest Ltd. (“CFF”) from a Determination made by a delegate of the Director of Employment Standards (the “Director”) dated January 9, 1998 in which the Director concluded CFF had contravened Sections 35 and 28 of the *Act* by failing to pay all wages owing to Anton Tschop (“Tschop”). The Director ordered CFF to cease the contravention and to pay an amount of \$1036.67 in respect of the contravention. CFF says this Determination is wrong as Tschop was neither needed to drive a company vehicle to the job site nor asked to do so.

ISSUES TO BE DECIDED

The issue is whether Tschop was performing “work” for CFF when he was driving a company truck to and from the job site. If so he is entitled to wages for that “work”. A secondary issue is whether the calculation by the Director of the hours worked by Tschop, in the event there was any “work”, is wrong.

FACTS

Tschop was employed by CFF between September 20, 1996 and November 12, 1996. CFF had contracted to Weyerhaeuser Canada to prune two blocks of land in the Mount Baldy area near Oliver, B.C. He was hired as a “pruner”, which essentially meant that he would be working with certain hand tools and cultivating trees and brush in the designated areas. Other than this background, the relevant facts are, for the most part, contained in a submission filed on behalf CFF by its site supervisor, Richard Finlay. His submission states:

In 1996, I was hired to supervise on the Crosby Fire & Forest, Mount Baldy pruning project. I performed my duties from involvement in the hiring process through to project completion.

On September 20, 1996, all the applicants were gathered at 14213 Spencer Avenue, Summerland to discuss the nature of the job and related responsibilities. Considerable time was spent reviewing Crosby Fire & Forest's policies, procedures and safety plan. It was clearly understood that each person hired would have to sign a form agreeing to the contents of the document. On the issue of transportation, it was clear that employees had to supply their own transportation to the job. They were also aware that if a company vehicle had room, catching a ride was possible, but could not be depended upon. It was clearly stated that this project did not have a transportation budget.

Anton Tschop was well aware of the above when he volunteered to drive a company vehicle to the job site. His motivation for this was to enable his crew to begin on site work earlier than other crews. Reluctantly this was permitted. At no point was Anton Tschop hired as a company driver.

Only a few additions to the above statement of facts are needed. The decision to permit Tschop to drive a company vehicle occurred on or about October 16, 1996. In addition to driving the company truck, and as part of the policies, procedures and conditions of employment in place at the time, Tschop was required to perform a series of "checks" on the vehicle on a daily or regular basis, including pre-trip checks, and to maintain a number of "check lists" relating to the operation of the vehicle during the time he drove it, including in-service, job site, gas station and shop lock-up check lists.

Also, the company vehicle that Tschop drove to the job site had to be on site to meet safety requirements.

ANALYSIS

"Work" is defined in the Act as follows:

"work" means the labour or services an employee performs for an employer whether in the employee's residence or elsewhere

There is no doubt from the evidence that driving a company vehicle to the site constitutes "work" and CFF is required to pay Tschop wages for it. While it is clear CFF did not ask Tschop to drive the vehicle and did not intend that he would be paid for driving it, it is also clear that CFF allowed Tschop to drive the vehicle and placed on him all the responsibilities that a driver would have for checks and maintenance of check lists. Also important is that the truck was required, for safety reasons, to be on site and Tschop was performing that service.

This is not a case of payment for “travel time”, but rather payment for a service provided by the employee to the employer with the knowledge and acquiescence of the employer of the performance of that service.

On the second issue, the burden in this appeal is on CFF to demonstrate the conclusion by the Director about the number of hours worked by Tschop is wrong. Some concerns have been raised, but those concerns fall short of showing an error was made by the Director. As such, I have no reason to vary the conclusion of the Director.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated January 9, 1998 be confirmed in the amount of \$1,036.67 together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

David Stevenson
Adjudicator
Employment Standards Tribunal