

**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 -

Pacific Forest Maintenance Ltd.  
("Pacific Forest")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 96/088  
96/099

**Date of Hearing:** July 4, 1996

**DATE OF DECISION:** **July 24, 1996**

**DECISION**

**APPEARANCES**

Joel Cotter	on behalf of Pacific Forest Maintenance Ltd.
Carl Martin	in person
Ross Turchyn	in person
Adele Adamic Standards	on behalf of Director of Employment

**OVERVIEW**

This is an appeal by Pacific Forest Maintenance Ltd (“Pacific Forest”) and by Ross Turchyn (“Turchyn”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination #CDET 000756 which was issued on January 12, 1996 by a delegate of the Director of Employment Standards. The Determination found that Pacific Forest owed wages to Turchyn and Carl Martin (“Martin”) and had made unauthorized deductions from Turchyn’s and Martin’s wages.

Pacific Forest denies that any wages are owed to Turchyn or Martin and denies that it contravened Section 21 of the *Act* (Deductions). It also argues that the monies deducted from Turchyn’s and Martin’s wages represent the recovery of advances paid to both employees.

A hearing was held on July 4, 1996 at which time sworn evidence was received from witnesses.

Based on my review of the evidence and the law I conclude that the Determination should be varied.

**ISSUE TO BE DECIDED**

There are two issues to be decided for each of the two employees - Turchyn and Martin:

- Are Martin and Turchyn owed wages and, if so, how much?
- Did Pacific Forest contravene Section 21 of the *Act* by making unauthorized deductions from the employees’ wages and/or by requiring them to pay the employer’s business costs?

*Carl O'Dell Martin*

**FACTS**

The Determination shows that Martin was employed by Pacific Forest as a foreman between March 10, 1995 and April 24, 1995. There is no dispute that Martin was to be paid \$300.00 per day.

The Determination shows the following amounts payable to Martin:

Wages	\$750.00
Unauthorized Deductions	\$926.20
Undocumented Advances	<u>\$2,495.00</u>
sub-total	\$4,171.20
Vacation pay	<u>\$166.85</u>
Total amount owing	\$4,338.05

The Director's delegate made the following observation in the Reason Schedule attached to the Determination:

As there were limitations to the documentation provided by both employer and employees my determination covers only matters where there was sufficient information for a finding pursuant to the Act.

*Wages*

Martin was paid for 5 days during shift #1. He gave evidence that he worked 6 1/2 days during that shift.

Pacific Forest relies on its "...weekly Earnings" records (Ex. #1) to show that Martin's first day of work was March 12, 1995 rather than March 10, 1995. William Sinclair ("Sinclair"), a director of Pacific Forest, gave evidence that the tree planting crew began working on March 12, 1995 because there was snow on the ground when they arrived at the work site on March 7, 1995. He acknowledged in his evidence that he "...went to look at the blocks..." with Martin prior to March 12th., but considered it to be "...just something to do..." until the snow melted.

Martin's evidence confirms that the tree planting crew began working on March 12, 1995. However, Martin also gave evidence that, as foreman, he was required to carry out pre-field work checks and discussions with the representatives from MacMillan-Bloedel. Other

pre-field work duties, according to Martin, entailed training “rookies” (new crew members) and obtaining the trees to be planted.

Martin gave evidence that he worked 6 days during “shift #2.” He said this was necessary because he and the crew were working on a new contract. Pacific Forest’s “Weekly Earnings” record shows “6 days?” beside Martin’s name. He was paid for 5 days during shift #2.

Martin was paid for 3 1/2 days during shift #3. Martin’s evidence was that he worked for 4 days. Pacific Forest’s “Weekly Earnings” record shows “4 days?” for Martin. Martin acknowledges that on the last day of shift #3 (March 29, 1995) only four tree planters worked. However, he testified that he attended MacMillan-Bloedel’s offices on that date to discuss Pacific Forest’s contract with “Mac-Blo” checkers.

*Deductions from Wages*

The Calculation Schedule attached to the Determination shows the following amounts as unauthorized deductions from Martin’s wages:

Fines:	\$57.20
Tailgate left on Louise Island	\$379.00
Food left on Louise Island	\$250.00
Camp costs for Becky	<u>\$240.00</u>
TOTAL	\$926.20

Sinclair gave evidence concerning each of the amounts shown above. He testified that the same fine was imposed on all tree-planters and the foreman because Pacific Forest was, in turn, fined by the licensee due to poor quality of planting in the last block (S# 701). Sinclair acknowledged in his evidence that the amounts of \$379.00 and \$250.00 were deducted from Martin’s wages because he had failed to ensure that a truck tail gate and food items were removed from Louise Island. On the amount of \$240.00 for “camp costs,” Sinclair gave evidence that there was an informal agreement between him and Martin, but he also acknowledged that the deduction “may be a clerical error.”

Martin admitted candidly that the tail gate and the food were not removed from Louise Island. He also stated that Becky was, in fact, an employee of Pacific Forest. This was confirmed by the “Weekly Earnings” records (Ex #1).

*Undocumented Advances*

The Calculation Schedule shows advances totaling \$2,495.00 as having been deducted from Martin’s wages.

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At the hearing, Pacific Forest submitted the following documents which had not been submitted to the Director's delegate at any time prior to the hearing:

	<u>DATE</u>	<u>EXPLANATION</u>	<u>AMOUNT</u>
(Ex #3)	March 16, 1995	Cash Advance to C. Martin	\$40.00
(Ex #4)	April 24, 1995	Cash Advance to C. Martin	\$200.00
		Unaccounted cash	\$200.00
(Ex #5)	March 5, 1995	CHQ #1494 to C. Martin	\$200.00
	April 27, 1995	CHQ #0460 to C. Martin	\$995.00
(Ex #6)	April 23, 1995	CHQ #1267 to C. Martin	\$110.00
		CHQ #1268 to C. Martin	\$110.00
(Ex #1)	Shift #1	Cash Advance to C. Martin	\$80.00
		sub-total	\$1, 915.00
		plus "COMCHEQ" cheque (see below)	\$500.00
		<b>TOTAL</b>	<b>\$2,415.00</b>

In addition, Joel Cotter ("Cotter") gave evidence that all crew members had received a cheque for \$500.00 gross (\$454.00 net) but a copy of this cheque could not be provided at the Tribunal hearing.

In his evidence, Martin acknowledged receipt of the amounts shown above, except the \$200.00 "unaccounted cash" on April 24, 1995. However, he testified that certain amounts were not advance payment of wages. According to Martin, the following amounts were not advances, for the reasons shown below:

	<u>DATE</u>	<u>EXPLANATION</u>	<u>AMOUNT</u>
	April 24, 1995	Unaccounted cash shortage	\$200.00
	March 5, 1995	CHQ #1494 refers to previous contract in Port Alice	\$200.00
	April 27, 1995	CHQ #0460 refers to wages for Becky Metcalfe, not C. Martin	\$995.00
	April 23, 1995	CHQ #1267 - RCMP speeding ticket	\$100.00
		CHQ #1268 - RCMP speeding ticket	\$100.00

In summary, Martin acknowledged that only the following amounts were paid as advances:

Cash Advance	Shift #1	\$80.00
Cash Advance	March 16, 1995	\$40.00
Cash Advance	April 24, 1995	\$200.00
“COMCHEQ” cheque		\$500.00 (gross)
	TOTAL	<u>\$820.00</u>

**ANALYSIS**

*Wages*

The essence of the appeal concerning Martin’s wages is that Pacific Forest argues that he worked and was paid for 35 days. The Director’s delegate made a determination that Martin had worked 37 1/2 days and, therefore, is owed \$750.00 in the form of unpaid wages. Having considered the evidence given by Sinclair and by Martin, I find that I prefer Martin’s evidence. His evidence concerning the pre-field work duties is both reasonable and plausible. In addition, the payroll records submitted by Pacific Forest (Ex #1) support Martin’s evidence concerning his days of work during shift #2 and shift #3. I therefore find that Martin did work a total of 37.5 days as set out in the Determination.

*Unauthorized Deductions*

Section 21 of the *Act* states:

- (1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.
- (2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.
- (3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this Act applies to the recovery of those wages.

It is clear that from the evidence that Pacific Forest did deduct \$926.20 from Martin's wages. These deductions were contrary to Section 21 of the *Act*.

*Undocumented Advances*

In his evidence, Martin acknowledged receipt of \$820.00 as advances. The \$200.00 "unaccounted cash" on April 24, 1995 (Ex #4) is a business cost and Section 21(2) prohibits Pacific Forest from requiring Martin to pay such costs. Similarly, the two payments of \$100.00 made on April 23, 1995 are business costs because I accept Martin's evidence that they pertain to the payment of speeding tickets while operating a truck owned by Pacific Forest. In the absence of any evidence to the contrary, I accept Martin's evidence that the \$995.00 cheque paid to him on April 27, 1995 was not an advance to him, but pertains to Becky Metcalfe's earnings. I also accept Martin's evidence that the March 5, 1995 payment of \$200.00 pertains to some event which occurred at Port Alice and is not related to this appeal. Thus, I find it reasonable that the amount shown as "undocumented advances" should be reduced by \$820.00 (from \$2,495.00 to \$1,675.00).

***Ross Turchyn***

**FACTS**

The Determination shows that Turchyn was employed as a cook by Pacific Forest between March 6, 1995 and April 16, 1995. There is some dispute about Turchyn's daily wage rate only insofar as what the rate should have been when he worked alone as a cook. Both Turchyn and Pacific Forest agree that he was to be paid \$180.00 per day when working with another cook. Turchyn gave evidence that he was to be paid \$345.00 per day when working as the only cook in the camp.

*Wages*

The Determination shows \$540.00 in unpaid wages as owing to Turchyn (3 days @ \$180.00/day).

Turchyn gave evidence that he was driving (with groceries) to the work site on March 4, 5 and 6, 1995. Then, he testified, he unloaded the truck on March 6th and began cooking for the tree planting crew on March 7, 1995. Turchyn submitted as evidence a parking receipt for \$7.98 issued on March 4, 1995 by Cache Creek Esso (Ex #3). He also testified that the receipt was issued for parking the truck full of groceries in a heated garage to prevent the food from freezing. In addition, he testified that he worked on March 19, 1995. Pacific Forest's records show March 19 as a day-off for Turchyn.

Sinclair gave evidence that Turchyn traveled by ferry from Prince Rupert and arrived in Skidgate on March 7, 1995. This was confirmed in cross examination by Carl Martin.

Turchyn also testified that he had a verbal agreement with Sinclair that he would be paid \$15/person/day when he was the only working cook in camp. According to Turchyn, the other cook (Carmen) left camp three days before him and was sick for one day. Sinclair denies that he agreed to any rate other than \$180.00/day and denies any discussion of any agreement involving \$15/person/day.

*Deductions from Wages*

The Determination shows the following deductions were made from Turchyn's wages:

undocumented advances	\$400.00
	\$100.00
	<u>\$36.00</u>
sub-total	\$536.00
unauthorized deduction for air travel	<u>\$189.00</u>
TOTAL	<u><b>\$725.00</b></u>

Cotter gave evidence that Turchyn received cash advances as follows:

March 16	\$300.00	(Ex #9)
18	\$80.00	(Ex #10)
31	\$500.00	(Ex #11)
April 10	\$500.00	(Ex #12)

Turchyn acknowledged that he received a cash advance of \$300.00 on March 16, 1995 (Ex #9) and \$80.00 during shift #1 (Ex #10). He also acknowledged receipt of cheque 0437 dated March 31, 1995 in the amount of \$500.00. However, he stated he did not receive and did not sign for a cash advance of \$500.00 on April 10, 1995.

I received no evidence to support the deduction of \$189.00 for air travel. Turchyn gave evidence that he flew at Sinclair's suggestion since he (Sinclair) said that he would pay for the airfare.



## ANALYSIS

The Reason Schedule contains the following statement:

There were gaps and inconsistencies in the materials presented by both parties. A decision has only been made with regard to those matters where there was sufficient information on which to base a determination.

Section 28 of the *Act* sets out the requirements that every employer must keep payroll records for each employee. In addition, the Employment Standards Branch has prepared guidelines and work sheets for contractors in the silviculture industry. These guidelines show clearly how an employer in the silviculture industry can meet its obligations under the *Act*.

### *Wages*

The evidence given at the hearing leads me to conclude that Turchyn arrived by ferry in Skidgate on the morning of March 7, 1995 rather than March 6, 1995. As a result, I accept the evidence in Exhibit #1 that Turchyn began cooking on March 8, 1995. There are no payroll records to contradict Turchyn's evidence that he worked on March 19, 1995. Furthermore, I note from Exhibit #13 that Turchyn flew to Vancouver on March 31, 1995. In the absence of any evidence to the contrary, I find it reasonable to conclude that his last day of work was March 30, 1995. For all these reasons I find that Turchyn is owed two days wages at \$180.00 per day for a total of \$360.00.

### *Deductions from Wages*

It is clear from the evidence that the deductions in the amount of \$36.00 and \$189.00 contravene Section 21 of the *Act* for the same reasons I gave earlier concerning the deductions made from Martin's wages. While I accept the evidence of both Cotter and Turchyn concerning the cash advances he received on March 16, 1995 (\$300.00) and March 18, 1995 (\$80.00), I received no evidence to convince me that the amounts (\$400.00; 36.00; and \$100.00) described in the Determination as "undocumented advances" were advanced to Turchyn and accepted by him as advances. In the absence of any evidence from Pacific Forest (which bears the onus in this appeal), I can find no reason to vary or cancel the Determination as it pertains to deductions from Turchyn's wages.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination be varied to show \$4,436.00 as the wages payable by Pacific Forest, based on the following:

Martin:

Unpaid Wages	\$750.00
Unauthorized Deductions	\$926.20
Undocumented Advances	<u>\$1,675.00</u>
	\$3,351.00

Turchyn

Unpaid Wages	\$360.00
Unauthorized Deductions	\$189.00
Undocumented Advances	<u>\$536.00</u>
	\$1,085.00

In addition, vacation pay and interest is to be added as required by the *Act*.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC:nc