

**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 -

Roger Savoie  
("Savoie" or the "Employee")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ib S. Petersen

**FILE NO.:** 1999/142

**DATE OF DECISION:** May 14, 1999



From the point of hire and throughout your two and one half years of employment, you apparently chose to accept that rate of pay. Now after termination, you argue that your rate of pay should have been \$15.00 per hour and insist that the employer must pay your additional overtime on the basis of that rate.”

Savoie’s appeal submission does little more than reiterate that his hourly rate was \$15.00 per hour (and attaches a hand written document, which appears to be his hours of work during his employment, and his pay statements from the Employer). He also complains at length about the conduct of the delegate.

I agree with the Employer that the burden rests with the appellant to show that the Determination is wrong. In my view, he has failed to meet that burden. I have reviewed the pay statements submitted by Savoie. They clearly set out the regular rate of pay, hours worked at that rate, and the hours worked at the appropriate overtime rate. The regular hourly rate in 1995 was \$10.00 per hour. The rate subsequently increased to \$10.50 and was \$11.00 in 1998. The pay statements also indicated the payment of vacation pay and a bonus. The amount of the bonus varied from pay cheque to pay cheque. The amounts paid to Savoie--from pay cheque to pay cheque--fluctuated considerably during his employment between 1995 and 1998. In my view, the pay statements submitted by Savoie are consistent with the delegate’s conclusions.

I am particularly troubled by two aspects of the merits of this appeal which, ultimately, leads me to dismiss the appeal.

First, the appeal does not contain any detailed explanation of how the hourly rate of \$15.00 and the hours worked correlate from Savoie’s point of view. For example, in the August 4, 1995 pay period, Savoie worked--according to the pay statement--80 hours at the regular rate, 15 at time and one half and 3 at double time, *i.e.*, a total of 98 hours worked. This works out to \$1,470 at \$15.00 per hour. According to the pay statement, he earned \$1,041 plus a \$429 bonus, *i.e.*, \$1,470. To this was added vacation pay. In the June 20, 1997 pay period, Savoie worked 79 hours at the regular rate (\$10.50), 16 at time and one half and 25 at double time, 120 hours in total. This works out to \$1,800. According to the pay statement for that period, he was paid \$1,606.50 plus a bonus of \$282.50, or \$1,890 plus vacation pay. For the pay period December 2, 1997 Savoie worked 79 hours at the regular rate--at that time, \$11.00--and 10.5 hours at time and one half, for a total of 89.5 hours. This works out to \$1,342.50 at \$15.00 per hour. According to the pay statement for that pay period, he received \$1,476.75, namely \$1,042.25 and a \$434.50 bonus. In my opinion, this is not consistent with Savoie’s assertion that he was being paid at the rate of \$15.00 per hour.

Second, given the comments in the Determination (set out above), and my analysis of the pay statements, I am troubled by the lack of any explanation of why the hourly rate was only challenged after the termination of his employment.

With respect to the claim for statutory holidays, there is nothing in the appeal to explain why the Determination is wrong--except that that it should be calculated at the higher rate. I dismiss the appeal on this point.

Savoie is very critical of the delegate's conduct in this matter. There are no particulars, or details, in the appeal to substantiate this criticism and, in my view, amounts to little more than Savoie's personal opinion of the delegate (which--without going into details--is clearly not favourable). It is clear that Savoie has a different understanding of his arrangement with the Employer than that ultimately arrived at by the delegate. However, there is nothing before me to indicate that the delegate conducted himself in a manner inconsistent with his role under the *Act*.

One final point raised by Savoie is the cheque paid by the Employer in respect of compensation for length of service. He says that there is no explanation for this amount. As mentioned initially in this decision, the Employer paid \$419.58 on account of compensation for length of service, \$550.69 less statutory deductions of \$131.11 (EI, CPP and tax). The delegate's investigation found that Savoie's lay off turned into a deemed termination (see Section 63(5)) and, given the length of his employment, he was entitled to two weeks' compensation. I agree with the delegate that Savoie is entitled to two weeks' compensation. Savoie appears to be of the view that he was terminated rather than laid off. Even if I accept his position in that regard, he is still only entitled to two weeks' compensation.

The amounts payable are calculated as set out in the *Act*:

63.(4) The amount the employer is liable to pay on termination of the employment is calculated by

- (a) totalling all the employee's weekly wages, at the regular rate, during the last 8 weeks in which the employee worked normal or average hours of work,
- (b) dividing the total by 8, and
- (c) multiplying the result by the number of weeks' wages the employer is liable to pay.

The Determination explains that the amount paid by the Employer represents two weeks' compensation. That is also the position taken by the Employer in its appeal submission. As mentioned above, the burden is on the appellant--in this case the employee--to show that the Determination is wrong. There is nothing in the appeal that explains why the amount does not represent two weeks' compensation. In the result, I dismiss the appeal on this point as well.

As such, I am not prepared to disturb the Determination.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated February 19, 1999 be confirmed.

**Ib Skov Petersen  
Adjudicator  
Employment Standards Tribunal**