

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 -

Westcoast Youth Net Society
(“Westcoast”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Mark Thompson

FILE NO.: 1999/22

DATE OF DECISION: May 31, 1999

DECISION

OVERVIEW

This is an appeal by Westcoast Youth Net Society (“Westcoast”) pursuant to Section 112 of the *Employment Standards Act* (the *Act*) against a Determination issued on December 22, 1998 by a delegate of the Director of Employment Standards (the “Director”). In the Determination, the delegate found that Westcoast had contravened Sections 17(1), 18(1)(2), 34(2), 40(1), 46(1)(2) and 58(3) of the *Act* and ordered Westcoast to pay \$5,883.72 in unpaid wages to two complainants, Mark Mingail (“Mingail”) and Talisa Gula (“Gula”).

Westcoast appealed on the grounds that the Determination contained certain factual errors and the Director’s delegate did not present the opportunity for a plan to recover wages owed.

ISSUES TO BE DECIDED

Is Westcoast entitled to a delay to pay wages owed to the complainants?

FACTS

The basic facts underlying the Determination are not in dispute. The complaints, Mingail and Gula, were hired by Westcoast from August 24, 1998 to October 5, 1998 and September 7, 1998 to October 30, 1998, respectively. Each had an agreement with Westcoast to receive \$20.00 per hour. Angela Wynton (“Wynton”) was the director and manager of Westcoast who hired Mingail and Gula. Neither complainant was paid according to his or her contract or according to the terms of the *Act*. Mingail did not receive any compensation during his period of employment. Gula received partial compensation in the amount of \$1,100 in cash from Winton.

The Director’s delegate also included penalty of \$0.00 in the Determination, but it was not the subject of an appeal.

The Director’s delegate found that Mingail and Gula had not been paid at least twice a month and that no payroll records had been provided or kept by Wynton on behalf of Westcoast. Based on the complainants’ work records, the delegate found that Mingail and Gula were owed regular wages, overtime and vacation pay for the periods of their employment. Both complainants signed agreements with Wynton in December 1998 that purported to override the standards of the *Act* regarding overtime pay.

In its appeal Westcoast, specifically acknowledged that it, or perhaps Wynton personally pursuant to a separate determination, owed wages to Mingail and Gula. Westcoast did take issue with some statements of fact in the Determination. In addition, the appeal

presented documents that identified former directors of Westcoast and pointed out that another company kept payroll records for Westcoast.

Wynton, on behalf of Westcoast, further stated that both Mingail and Gula were aware that funding for Westcoast had not been obtained when they started work, but were anxious to begin. Wynton instructed them not to work beyond 35 hours per week and would not be paid for such time, although hours worked beyond 35 would be banked for later use.

The major thrust of the appeal was that the Tribunal should order a grace period for the payment of wages owed to the two complainants. The Director's delegate had not offered a "payment proposal" to resolve the dispute. Wynton stated that she was taking various steps to obtain funds for Westcoast and would pay Mingail and Gula when resources permitted.

The Director's delegate stated that Westcoast had not offered any schedule for payment and had not paid any money owing as of April 30, 1999.

ANALYSIS

The disagreements about factual statements in the Determination did not affect the outcome of the appeal. The appeal stated that Mingail and Gula were told they should not work more than 35 hours per week. Mingail never worked more than 35 hours in a week, and Gula did so only once, for one-half an hour. However, each complainant worked more than 8 hours occasionally, and the Determination included payment for overtime work.

Westcoast did not challenge the accuracy of the work records on which the Director's delegate relied. Section 1 of the *Act* defines "work" as:

The labour or services an employee performs for an employer whether in the employee's residence or elsewhere.

It was management's responsibility to control the complainants' hours of work, and Section 4 of the *Act* bars agreements to waive requirements of the statute, except in specific circumstances not relevant in this case. Any agreements between Mingail and Gula with Westcoast to escape the standards of the *Act* do not bind the Director or the Tribunal.

I find no provision in the *Act* giving the Tribunal the authority to vary a Determination to establish a schedule of payments or to delay collection of wages owed. Indeed, the appeal did not propose a schedule for payments. It merely requested a delay in the enforcement of the Determination. Arrangements for payment are administrative matters and fall under the Director's authority. Moreover, as the Director's delegate pointed out, the payment of wages owing has been pending for over 6 months.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, I order that the Determination dated December 22, 1998 be confirmed in the amount of \$5,883.72, plus interest accrued since the date of the Determination pursuant to Section 88 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal