

Appeals

- by -

Fairwinds National Boating Inc.
(“Fairwinds”)

- of Determinations issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Mark Thompson

FILE Nos.: 2002/079, 2002/080

DATE OF DECISION: May 23, 2002

DECISION

OVERVIEW

This is an appeal by Fairwinds National Boating Inc. (“Fairwinds”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against two Determinations issued by a Delegate of the Director of Employment Standards (the “Director”) on February 12, 2002. One Determination (File No. 2002/80) found that Fairwinds had failed to pay three former employees, Nicholas Chesworth (“Chesworth”), Noel Samaai (“Samaai”) and Nalini Singh (“Singh”) regular wages and vacation pay in the case of Singh. The second Determination (File No. 2002/79) found that Fairwinds had failed to pay another former employee, Birgit LeBlanc (“LeBlanc”) regular wages, banked time, vacation pay and compensation for length of service.

Fairwinds disputed the calculations of the regular pay owed to Chesworth, Samaai and Singh. It also appealed the Determination covering LeBlanc on the grounds that the calculations of regular wages were incorrect and that LeBlanc had been dismissed for cause, so that she was not entitled to compensation for length of service. Fairwinds acknowledged that it owed all four former employees regular wages.

This Decision was based on written submissions.

ISSUES TO BE DECIDED

The issues to be decided in this case were: what were the appropriate amounts of regular pay owed to Chesworth, Samaai, Singh and LeBlanc; what was the appropriate amount of vacation pay owed to Singh and LeBlanc; was LeBlanc dismissed for cause.

FACTS

The basic facts of these cases were not in dispute. Fairwinds was a call center agency located in Prince George. The business had been established recently at the time of the complaints and was experiencing financial difficulties. The President, Dave Pratt (“Pratt”) acknowledged that Fairwinds owed Chesworth, Samaai, Singh and LeBlanc regular wages for the period November 10, 2001 to December 21, 2001. Fairwinds made a partial payment of outstanding wages to the complainants on December 21, 2001, and in January 2002, Pratt told the Director’s Delegate that all employees were being paid. On January 24, 2002, the Delegate issued a Demand for Records to Fairwinds to obtain payroll records for the four former employees. Fairwinds failed to provide any records. The Delegate then issued the Determinations based on the employees’ records. The Delegate found that Chesworth was owed \$941.71, Samaai, \$1482.40, Singh, \$1196.21, and LeBlanc, \$4213.04, all amounts including interest, under Sections 17(1), 18(1) and (2) and 58(1) and 63(1) of the *Act*.

In its appeal of February 18, Fairwinds argued that the amounts due to Chesworth, Samaai and Singh were incorrect, although it did not dispute they were entitled to receive wages. According to Gary Shannon (“Shannon”), the general manager, a review of the company’s payroll records indicated that each employee was entitled to a different amount. He offered to arrange a payment schedule to enable the company to remain active. According to Shannon, Chesworth was owed more than the amount in the Determination, Singh was entitled to a smaller amount and Samaai was owed virtually the same amount as that in the Determination. In a separate appeal, Shannon stated that LeBlanc was owed less for wages

than the Determination stated, but he accepted the amounts for banked time and vacation pay. In addition, the appeal of LeBlanc's Determination argued that she had been dismissed for cause, "for reasons of miss trust (sic)" because she had spoken to the staff on confidential matters. Therefore, the appeal argued, LeBlanc should not receive compensation for length of service.

Fairwinds never produced payroll records to support its calculation of the amounts it stated that it owed to the four complainants. The Delegate met on March 1, 2002 with the new officers, including Shannon, and he told the employees they would be paid beginning April 1, 2002. On March 4, Shannon wrote to the Delegate agreeing to pay the complainants their pay in three installments, beginning April 1, 2002. Chesworth and Samaai were willing to accept the amounts in the Determination if they were paid. Singh disagreed with the calculation Shannon had produced and produced a time sheet in support of her position. The Delegate advised Shannon that Fairwinds should provide the payroll records for Singh to the Tribunal as part of its appeal. The Delegate could not obtain any information from Fairwinds regarding the alleged incident leading to LeBlanc's dismissal on December 5, 2002, despite numerous requests. LeBlanc vigorously denied any misconduct in the course of her employment, in particular information about staff members who were investing in the company.

Singh submitted a statement to the Tribunal after the deadline for submissions. The issues it raised were not sufficiently important to warrant an extension of the deadline, especially when a further delay in the completion of the Decision would occur.

ANALYSIS

Fairwinds did not provide any payroll records to the Delegate prior to the issuance of the Determinations, despite receiving a Demand for Records. After the Determinations were issued, it again did not produce any documentation to support its calculations of the amounts owed to the former employees. On April 3, 2002, the Delegate concluded that the company was no longer operating, so that it was not able to provide the information or make the payments it promised on April 1, 2002. Fairwinds did not produce any evidence in support of its allegation that LeBlanc was dismissed for cause. In disputes of this nature, the employer bears the onus of demonstrating cause for a termination.

As an appellant, Fairwinds had to provide evidence that the Determinations contained errors of fact or law. While it asserted that the Determinations had errors of fact, it did not present any evidence to support its position.

ORDER

For these reasons, the Determinations of February 12, 2002 are confirmed, pursuant to Section 115 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal