

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-

Raimar Interiors Ltd.
("Raimar" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/133

DATE OF DECISION: May 21, 1998

DECISION

OVERVIEW

This is an appeal brought by Raimar Interiors Ltd. (“Raimar” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on February 24th, 1998 under file number 87804 (the “Determination”).

Tony Delorey (“Delorey”) filed a complaint alleging that he had not been paid all of the wages to which he was entitled under the *Skills Development and Fair Wage Act* (“SDFWA”) and the *Skills Development and Fair Wage Regulation* (“SDFWR”). Delorey also claimed that he was entitled to compensation for length of service under section 63 of the Act as a result of his termination on or about December 15th, 1997.

The Director’s delegate determined that Delorey was owed \$230.57 on account of unpaid wages (including interest) but was not entitled to any compensation for length of service inasmuch as he was employed for less than three months and by reason of section 65(1)(e) of the Act.

ISSUE TO BE DECIDED

In a letter, appended to the employer’s appeal form, dated March 4th, 1998, the employer set out its principal ground of appeal, namely, that the Director’s delegate did not properly account for all of the wages which were paid to Delorey on account of his work at the Lions Gate Hospital (“LGH”) site. The employer says that Delorey was paid \$2,214.08 for work undertaken at the LGH site whereas the Director’s delegate only credited the employer with the sum \$1,978 on this account.

FACTS AND ANALYSIS

There is no dispute that LGH is a “fair wage” site for purposes of the SDFWA. Similarly, there is no dispute that Delorey worked at the LGH site from October 27th, 1997 until December 15th, 1997 as a “Wall and Ceiling Installer” and, thus, was entitled to be paid, pursuant to the SDFWR (Schedule 3), at an hourly rate of \$25.58 including \$4.00 on account of benefits.

The delegate’s investigative and adjudicative task was complicated by the lack of adequate employer payroll records and the fact that, in addition to his work at the LGH site, Delorey also worked at two other sites during the relevant time frame--“Cloverdale” and a “Canada Trust” project in Port Coquitlam. It is common ground that neither of these latter two sites was governed by the SDFWA.

The Director's delegate determined that Delorey worked a total of 86.25 hours at the LGH site. I accept the delegate's finding in this regard for the reasons set out in the Determination and, in any event, this finding has not been challenged on appeal. However, the employer says that the delegate erred in assessing the employer's "credits" for wages paid on account of work undertaken at the LGH site. In the "Calculation Sheet" appended to the Determination, the Director specifically set out five particular cheques that represented, either in whole or in part, monies paid to Delorey for work at the LGH site. These monies totalled \$1,978 for work done at the LGH site, and when deducted from Delorey's "LGH earnings", resulted in a balance due of \$228.08 (which, with interest, was the sum ordered to be paid under the Determination).

However, the employer maintains that it was not properly credited for a cheque, numbered 215 and dated November 7th, 1997, in the amount of \$1,000 that was issued for work purportedly undertaken at both the "Canada Trust" and LGH sites. The following note appears on cheque number 215 "ON ACC. CT/LGH". In reply to this submission, the Director's delegate filed a memorandum with the Tribunal, dated March 19th, 1998, in which she noted that she rejected the employer's argument on this point because:

- the employer's own document, a handwritten summary of accounts appended as Exhibit A to the delegate's March 19th memorandum, shows a figure of \$1000 for work *solely* undertaken by Delorey (and invoiced by him under number 110797--*i.e.*, November 7th, 1997) at the Canada Trust site;
- Exhibit A also shows that Delorey's invoice number 110797 was paid, in full, by way of cheque number 215; and
- Delorey's invoice number 110797, dated November 7th, 1997, only refers to work at the "Canada Trust Po Co" site and is in the amount of \$1,000.

Given the foregoing, I am fully satisfied that *the employer's own documents* clearly show that cheque number 215 was issued for work undertaken *only* at the Canada Trust site in Port Coquitlam and does not in any way relate to work undertaken at the LGH site. Accordingly, in my view, the employer's submission that cheque number 215 related, at least in part, to work undertaken by Delorey at the LGH site cannot be given any credence.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$230.57** together with whatever further interest that may have accrued, pursuant section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft,
Adjudicator
Employment Standards Tribunal