

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-

John Curry  
("Curry")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

ADJUDICATOR: C. L. Roberts

FILE NO: 1999/195

DATE OF DECISION: May 31, 1999

DECISION

This is a decision based on written submissions by John Curry, Darryl Stroink for Thomcat Equipment Ltd. and Michael Taylor for the Director of Employment Standards.

OVERVIEW

This is an appeal by John Curry ("Curry"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued March 8, 1999. The Director's delegate, Mr. Taylor, found that Curry was not owed commissions or vacation pay, and dismissed his complaint.

ISSUE TO BE DECIDED

Whether the Director erred in dismissing Curry's complaint.

#### FACTS

Curry worked for Thomcat Equipment Ltd. ("Thomcat") as a salesperson from October 27, 1997 until approximately June 27, 1998. Curry filed a complaint with the Employment Standards Branch claiming he was owed commissions and vacation pay in the amount of \$8000.00.

The Director's delegate found a fundamental discrepancy in the position of the parties regarding the basis of Curry's remuneration. Curry claimed a base salary of \$2000.00 per month plus a 20% commission on net profits of wholegoods, 10% on rentals and 2% on miscellaneous deals, with a guarantee of \$3000.00 per month.

Thomcat's position was that Curry was offered a salary of \$2000.00 per month plus 10% on wholegoods. Thomcat also stated that when Curry sought a minimum of \$3000.00 per month, that was agreed to subject to a revision in the commission structure. That revision, in Thomcat's view, was that Curry received \$3000.00 plus commissions as described by Curry where they exceeded \$3000.00 per month. Thomcat's calculations indicated that Curry had been overpaid by approximately \$9,000.00.

On the basis of the evidence provided, the Director's delegate accepted, on a balance of probabilities, Thomcat's version of the payment scheme.

That evidence included a letter sent by Thomcat to Curry on October 23, 1997, outlining the payment scheme described, which Curry denied receiving. The Director's delegate also examined other documentation, including the parties' notes, and the record of Curry's draws. The Director's delegate found the payroll records to be of little assistance in determining the issue of payments, since the draws did not, in his opinion "bear any direct relationship to either a \$3000 monthly salary plus bonuses, or \$2000 per month plus commissions with a guarantee of \$3000 per month."

The Director's delegate placed more weight on circumstantial evidence, including Stroink's notes prepared in anticipation of the interview with Curry, which were consistent with the agreement made with Curry's successor.

Ultimately, the Director's delegate preferred Thomcat's version of the remuneration scheme because "it seems more likely to me that Thomcat intended to pay Curry substantially the same wages under the revised scheme as it would have under the scheme it initially offered," and that it was unlikely that Thomcat would have agreed to a compensation scheme which would have cost it significantly more money.

The delegate concluded that no wages were owing to Curry and dismissed the complaint.

#### ARGUMENT

Curry outlines the following reasons for appealing the decision:

- 1) the pay comparison to past and future employees are surely not connected;
- 2) I have produced factual information that Mr. Taylor has chosen to ignore;

- 3) Mr. Taylor has taken the word of a person that has produced as evidence false documents which even Mr. Taylor said were probably false;
- 4) Most of which Mr. Taylor has written in my estimate is double talk.

No documentation or submissions were provided in support of the appeal.

In its response to the appeal, Thomcat states that Curry never complained about his remuneration or indicated he was dissatisfied with it until after he quit.

The Director's delegate states that he has no recollection of telling Curry that documents provided by Thomcat were "probably false," and that all documents received from both parties were considered as evidence.

#### ANALYSIS

The burden of establishing that the Determination is incorrect rests with an Appellant. Curry has failed to discharge this burden.

It is insufficient for an appellant to say that a Determination is wrong without providing some evidence that it is. Reason number 4 discloses no ground of appeal. The other three grounds were unsupported by any submissions or evidence to challenge or controvert the findings.

Having nothing of substance in support of Curry's position that the Director's delegate erred, I find that the appeal is devoid of merit. (see also Ali v. British Columbia (Director of Employment Standards BC EST#D436/97).

#### ORDER

I order, pursuant to Section 115 of the Act, that the Determination, dated March 8, 1999 be confirmed.

C. L. Roberts  
Adjudicator  
Employment Standards Tribunal  
BC EST #D223/99