

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 -

Bruce W. Webb
("Webb")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 1999/210

DATE OF DECISION: June 2, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Bruce W. Webb (“Webb”) against a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 18, 1999. In the Determination, the delegate found that Webb’s former employer Buckeye Canada (“Buckeye” or the “Employer”) owed him a total of \$2,680.94 in unpaid wages, vacation pay and interest.

Webb appealed the Determination on the grounds that Buckeye had submitted fraudulent information to the Director’s delegate and to its group benefits carrier Sun Life, that Buckeye’s offer of severance pay was incorrectly calculated and the information in the Determination concerning his banked time was incorrect.

Buckeye replied that it had complied with the *Act*, and had in fact offered Webb severance pay in excess of the amount required by the *Act*.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether the Determination was based on correct information that afforded Webb his rights under the *Act*.

FACTS

Webb was employed by Buckeye as a sparehand from June 7, 1995 until December 2, 1998. Buckeye and Webb agreed that he did not work for 15 months during his period of employment. While the record did not contain the specifics of the interruption in Webb’s work history, all parties acknowledged that he suffered a back injury that prevented him from working for some period, apparently in 1996 and 1997. Webb and Buckeye disagreed as to the cause of the injury, but that matter is not relevant to this case. The circumstances of Webb’s termination were not set out clearly in the record.

Buckeye terminated Webb on December 2, 1998, offering six weeks’ pay at the sparehand rate in lieu of notice. The letter of termination included a cheque for \$6240.13, which the Employer stated exceeded the requirements of the *Act*. The letter also stated that the offer of severance was in exchange for an “executed release.” Webb refused the Employer’s offer, and on December 3, 1998, it offered him three weeks’ pay as required by the *Act*. Webb declined to pick up the cheque issued pursuant to the December 3 letter, and Buckeye reiterated its offer by letter on January 18, 1999.

Webb filed a complaint with the Employment Standards Branch on January 19, 1999 alleging that he had been terminated without cause, had not been paid for all hours worked and vacation pay. He also alleged that he had been injured at work and that Buckeye was guilty of permitting unsafe work practices. The complaint claimed pay at the number 4 operator rate (higher than the sparehand rate) for November 14-17, 1998, work scheduled and not paid between November 22 and December 1, 1998, and sick time deduction pay and banked time, plus vacation pay, for a total of \$4,791.35. In addition, Webb claimed profit sharing in the amount of \$3,020.08 and 24 weeks of compensation for length of service at 48 hours per week for a total of \$20,851.20. The complaint concluded by offering to settle all claims against Buckeye for a total of \$28,662.63, the total of the amounts claimed.

On March 12, 1999, Webb wrote to the Director's delegate responsible for his complaint stating that he wanted to delete claims for severance pay (i.e., compensation for length of service), profit sharing, "termination without just cause, injury related issues, unfair labour practices, unsafe labour practices" and separation papers. He stated that he wished "hours owed, vacation owed as well as accrued banked time."

Webb provided payroll records and information on Buckeye's fringe benefits package to the Director's delegate. Buckeye also provided the delegate with payroll records, time sheets, as well as offers to settle certain matters.

In her Determination, the delegate noted that Webb had amended his original complaint and that he wished to deal with other matters through alternative channels.

The delegate found that Webb had claimed pay at the number 4 operator rate for days worked between November 13 to November 25, 1998. Although she concluded that Webb had worked as a sparehand on the days in question, the Employer had agreed to pay him the difference between the two rates. Webb also argued that she should have been paid for days scheduled on November 23 to November 25, 1998. The delegate found that he had not worked on two days, but had been paid through the Sun Life disability plan and he had been paid for hours worked on the third day. The delegate recorded Buckeye's agreement to pay Webb for November 30 and December 1, 1998 and 13.5 hours of banked time. The Determination found that Webb was entitled to \$2,680.94, and Buckeye had issued a cheque for that amount.

On May 3, 1999, Webb wrote to the Tribunal requesting that his appeal be amended to include compensation for length of service of three weeks, lost wages for November 24 and 25, 1998 and "replenishment" of his vacation bank. He attached a statement in support of his claim, plus a letter from his physician discussing a back injury and difficulties Webb had experienced in returning to work.

Stated briefly, Buckeye argued in response to the appeal that it had complied with the *Act*, of if there were errors in the information provided to Webb, these were unintentional and corrected when identified. At Webb's request, Buckeye had paid him for his banked

time to cover the period from his absence from work, presumably in November 1998, and the completion of a seven-day waiting period for his disability insurance.

ANALYSIS

The *Act* grants any person served with a determination the right to appeal that determination to the Tribunal. In order to succeed in such proceedings, the appellant must demonstrate that the determination in question contained errors of law or fact that warrant the determination being varied or cancelled. Webb's appeal contained a number of allegations that Buckeye had violated the *Act* as well as other statutes. The appeal did not contain any information that was not available to the Director's delegate when she issued her Determination.

Webb voluntarily amended his original complaint to limit its scope to three issues: wages owed, vacation pay and pay for banked time. The Determination dealt with these issues and found that Buckeye owed Webb for vacation pay, 13.5 hours of banked time and a rate of pay difference for November 30 to December 1, 1998. Webb voluntarily limited the scope of his complaint after it had been filed. After the Determination was issued and after his original appeal was filed, Webb sought to introduce a new complaint against Buckeye.

This Tribunal does not entertain new complaints or oversee the investigations of delegates of the Director. Its role is to adjudicate appeals from determinations. The appeal in this case presented no information not already available to the delegate; nor did it demonstrate errors of law.

ORDER

For these reasons, the Determination of March 18, 1999 is confirmed pursuant to Section 115 of the *Act*. Webb is entitled to \$2,680.94, plus any further accrued interest pursuant to Section 88 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal