

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 -

Dan Valgardson
Operating as Rocky Mountain Sandblasting and Painting
("Valgardson")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Cindy J. Lombard

FILE No.: 2000/124

DATE OF HEARING: May 26, 2000

DATE OF DECISION: June 9, 2000

DECISION

APPEARANCES

The Appellant, Dan Valgardson, operating as Rocky Mountain Sandblasting and Painting (“Valgardson”) appeared on his own behalf as did the Respondent, Quentin Schmitke (“Schmitke”).

OVERVIEW

This is an appeal by the employer, Dan Valgardson, pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a determination of the Director of Employment Standards (the “Director”) issued on February 5, 2000.

The Respondent, Schmitke, had alleged that he was owed regular and overtime wages by Valgardson. In his determination, the Director determined that the employer, Valgardson, owed the employee, Schmitke, the sum of \$3,111.45 inclusive of regular and overtime and vacation pay due plus interest pursuant to Section 88 of the *Act* in the amount of \$160.64 for a total owing of \$3,272.09.

ISSUES TO BE DECIDED

The two issues raised on appeal at the hearing by Valgardson were as follows:

1. The respondent, Schmitke, did not work on the statutory holidays, August 3rd, 1998, and September 7th, 1998, and therefore was due regular time instead of time and a half.
2. One cheque for wages paid to Schmitke dated April 7, 1998, in the amount of \$812.00 was not taken into account in the Director’s calculation of wages owing as Valgardson was not able to obtain a copy of that cheque from the bank and forward it to the Director until after the Director’s determination was issued. The Director’s determination was issued March 10, 2000, whereas the cheque was faxed to the Director on April 10, 2000, at 4:30 p.m.

FACTS AND ANALYSIS

Issue 1. The respondent, Schmitke, did not work on the statutory holidays, August 3rd, 1998, and September 7th, 1998, and therefore was due regular time instead of time and a half.

In determining the amount of wages owed, the Director was provided with handwritten paystubs, that is for the months of August and September as well as the paystubs for October and November, which are attached to the Determination. In his determination, the Director assumed that because the completed paystubs for October and November did not indicate any time for the statutory holidays of Thanksgiving on October 12 and Remembrance Day on November 11 were clearly marked by the employer as statutory holidays, whereas with respect to the statutory holidays of August 3 and September 7, the paystub information indicated eight hours of work for

both of those days. However, at the hearing, the employee, Schmitke, agreed with Valgardson that he had not worked on either August 3 or September 7 and in fact is due regular time rather than time and a half.

Issue 2. One cheque for wages paid to Schmitke dated April 7, 1998, in the amount of \$812.00 was not taken into account in the Director's calculation of wages owing as Valgardson was not able to obtain a copy of that cheque from the bank and forward it to the Director until after the Director's determination was issued. The Director's determination was issued March 10, 2000, whereas the cheque was faxed to the Director on April 10, 2000, at 4:30 p.m.

Again, with respect to this issue the employee, Schmitke, agreed with the employer, Valgardson, that since the Director did not receive a copy until after the determination was issued that the cheque dated April 7, 1998, in the amount of \$812.70, was probably not deducted from the amount owing to Schmitke.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination with respect to Schmitke be returned to the Director to recalculate the amount owing to Schmitke based on the agreement of the parties that:

1. The employee did not work on the statutory holidays of August 3 and September 7, 1998;
and
2. The employee, Schmitke, did receive the cheque dated April 7, 1998, in the amount of \$812.70 and that sum should be deducted from the amount owing to him.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal