

An appeal

- by -

Valleywide Security & Alarm Ltd.
("Valleywide")

- of a Determination 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: Cindy J. Lombard

FILE No.: 2001/24

DATE OF HEARING: April 27, 2001

DATE OF DECISION: May 16, 2001

DECISION

APPEARANCES

The Appellant/Employer Valleywide Security & Alarm Ltd. (“Valleywide”) was represented by Gerry Parker.

The Respondent/Employee, Neil Malick (“Malick”) appeared on his own behalf.

OVERVIEW

This is an appeal by the employer Valleywide pursuant to Section 112 of the Employment Standards Act (the “Act”) of a Determination which was issued November 27, 2000, finding that the Respondent employee Malick was due a total of \$1,273.11 comprised of the following:

1)	unpaid commission of	\$100.00
2)	balance of statutory holiday pay due for July 1, 1999	\$90.00
3)	one week wages being compensation in lieu of notice	\$931.69
4)	vacation pay on 1) to 3)	\$44.87
5)	interest pursuant to Section 88 of the Act	<u>\$106.42</u>
		\$1,273.11

ISSUES TO BE DECIDED

- 1) Was the employee Malick due to commission of \$100.00?
- 2) Was the employee Malick due regular wages or statutory holiday pay for July 1, 1999?
- 3) Is the employer Valleywide liable to pay compensation in lieu of reasonable notice or is Valleywide excused from liability pursuant to Section 63(3)(c) on the grounds that the employee Malick quit?
- 4) Is the employer Valleywide liable to pay compensation in lieu of reasonable notice or is Valleywide excused from liability pursuant to Section 63(3)(c) on the grounds that the employer had just cause for terminating Malick’s employment?

The onus on appeal is on the Appellant to show that the Determination is wrong.

FACTS AND ANALYSIS

Valleywide was a company which sold, installed and maintained alarm systems. Malick was employed by Valleywide as a technician between January 6, 1999 until July 19, 1999 at an hourly rate of \$20.00 per hour except for piece rate work for which he was paid \$20.00 per point.

1) According to Valleywide:

a) Commission

Malick did not make the sale of an alarm system to Walter Iwanciwski; rather David Ross made the initial contact and Malick was merely responsible for installing the system.

b) Statutory Holiday pay

Malick was not requested by Valleywide to travel on a statutory holiday i.e. July 1, 1999 to Prince George to work; rather, Malick was requested to travel on Friday, July 2, 1999. Malick asked to travel on Thursday July 1st because he wished to arrive early to visit his mother.

c) Compensation in lieu of notice

i) Malick quit. He was off for a few days and did not return to work.

ii) In the alternative, Valleywide had just cause for dismissing Malick, namely he had falsified time cards, for example Malick had claimed for 1 hour travel time to Vernon return and one hour on job at Sauder when in fact another employee, Julie Anderson, says that Sauder said that Malick never attended in Vernon.

2) According to Malick:

a) Commission

Malick says that he secured this sale and then spent two hours installing and going over how the system worked with the purchaser, Walter Iwanciwski. In a written statement, Walter Iwanciwski confirmed that Malick alone was responsible for the sale of the alarm system to him.

b) Statutory Holiday Pay

Malick says that Valleywide asked him to travel to Prince George on July 1, 1999 in order to be there to work on July 2, 1999 and in fact he did work on July 2nd in terms of making calls to schedule meetings during the week he was there.

c) Compensation in lieu of notice

i) Malick denies that he falsified the claim for the travel time and meeting with Sauder in Vernon. Furthermore, the hearing was the first time this allegation was raised with Malick.

- ii) Malick was granted a few days off on July 15, 1999. Malick returned to work on July 19, 1999 and was informed by Parker on behalf of the owner, Mr. Baril, that his position was no longer available to him. The day previous, i.e. July 18, 1999, Malick had noticed an advertisement in the local paper, the Daily Courier by Valleywide for a certified journeyman installer.

Based on all of the evidence before us we find as follows:

- 1) The commission in the amount of \$100.00 is confirmed as owing to Malick based on the direct evidence of Malick and the purchaser, Iwanciwski. The only evidence to the contrary was the hearsay evidence of Parker that a Julie Anderson told him otherwise.
- 2) The evidence of Malick that he worked on July 1st at the request of Valleywide is confirmed in the amount of \$90.00. The employer confirmed that Malick worked on that day in its action of paying him regular wages for that day. According to Section 40 of the Act, Valleywide is liable to pay one and a half times Malick's regular wage.
- 3) Malick did not quit his employment and was not terminated for just cause. Consequently pursuant to Section 63(3)(c) of the Act was entitled to one week's pay in lieu of notice.

Parker stated that the ad for a technician was placed by Mr. Baril who did not attend to give evidence. Malick's evidence that he did not quit is accepted as credible. He had no other job to go to.

The Appellant has not discharged its onus on this appeal to show on a balance of probability that the Determination was wrong.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination be confirmed as issued in the amount of \$1,273.11 plus whatever interest may have accrued pursuant to Section 88 of the Act since its issue.

CINDY J. LOMBARD

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal