

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 -

Kispiox Forest Products Ltd.
(" Kispiox " or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/300

DATE OF DECISION: June 20, 2000

DECISION

OVERVIEW

This is an appeal brought by Kispiox Forest Products Ltd. (“Kispiox” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 16th, 2000 under file number ER 027-872 (the “Determination”).

THE DETERMINATION

Two separate determinations were issued against Kispiox on the same day and under the same file number. Both determinations were appealed to the Tribunal on April 10th, 2000.

The first determination ordered Kispiox to pay individual and group termination pay to seven former Kispiox employees. That determination was appealed and in BC EST #D238/00 (issued concurrently with this decision), I confirmed the award with respect to five of the seven employees but referred the matter of compensation relating to the other two employees back to the Director for further investigation.

By way of the Determination now before me, Kispiox was ordered to pay \$65,638.68 on account of unpaid vacation pay (section 58 of the *Act*) owed to 62 former Kispiox employees (the employees’ individual entitlements are set out in Schedule A appended to the Determination). The individual amounts in question range from \$48.01 to \$3,221.22.

THE APPEAL

Legal counsel for the employer does not dispute the Determination as it relates to most of the employees’ claims. However, counsel submits that the Determination is incorrect with respect to the claims of about one-third of the 62 employees. Counsel submits that the Determination overstates Kispiox’s liability for unpaid vacation pay by approximately \$4,600.

ANALYSIS

In a written submission filed with the Tribunal and dated May 19th, 2000, the Director’s delegate acknowledges that there may be legitimate discrepancies between some employees’ actual vacation pay entitlement and the amount awarded to them by way of the Determination. The delegate’s submission continues:

“I have been in discussion with counsel for the Employer with respect to these anomalies and I believe that the discrepancies should be resolved through negotiation between the Employer and myself. In general, I accept the Employer’s figures as set out in their appeal with the reservation that I have seen no evidence to substantiate any of the payments that they claim to have made.”

In light of the fact that I have already referred back to the Director two employees’ claims relating to the matter of termination pay, I think it most appropriate to also refer the matter of

vacation pay back to the Director for further investigation. It would appear that there is some reasonable expectation that the question of the disputed vacation pay entitlements may be settled by negotiation between the delegate and counsel for the employer.

ORDER

Pursuant to section 115(1)(b) of the *Act*, I order that this matter be referred back to the Director.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal