

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 -

Richard Adrian Yeomans operating as
Richards Contracting
("Yeomans")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/240

DATE OF DECISION: June 14, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Richard Adrian Yeomans operating as Richards Contracting (“Yeomans”) of a Determination that was issued on March 7, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Yeomans had contravened subsections 40(1) and (2) of the *Act* in respect of the employment of Steven Anderson (“Anderson”) and ordered Yeomans to cease contravening and to comply with the *Act* and to pay an amount of \$3883.76.

The appeal sets out three points, which Yeomans has requested the Tribunal to consider as his appeal. They are:

- 1) When Mr. Anderson was hired he was offered \$15.00/Hr. with normal overtime, etc. He indicated that he preferred a flat rate of \$18.00/Hr. for all hours worked and that this rate would more than take care of overtime.
- 2) Mr. Anderson has hours marked on his time sheet while he was using my truck and loader for his own personal business. And did not pay me for the use of the equipment.
- 3) Mr. Anderson removed items of equipment from the truck when he quit my employment including receipt books and other records.

ISSUES TO BE DECIDED

The issue in this case is whether Yeomans has demonstrated that the Determination was wrong in its conclusion that Anderson was owed overtime wages and interest in an amount of \$3883.76.

FACTS

By way of background, the Determination sets out the salient facts:

Richard Adrian Yeomans operating as Richards Contracting (Richard’s) is a small truck hauling business in Prince George operated and owned by Richard Adrian Yeomans.

The complainant Steven H. Anderson (Anderson) was employed by Richard’s as a Truck Driver from April 1998 to May 19, 1999 at an hourly rate of \$18.00.

All of the matters raised by Yeomans in this appeal were raised during the investigation and were considered and commented on in the Determination.

There was no dispute by Yeomans that Anderson was being paid \$18.00 an hour. Yeomans took the position during the investigation, as he does in this appeal, that Anderson agreed to a rate of \$18.00 an hour, with no overtime. Anderson denied any such agreement.

The allegations relating to Anderson not paying Yeomans for use of his equipment and for items he removed from truck when he quit were found by the investigating officer to be unrelated to Anderson's claim for overtime under the *Act* and raised issues that had to be addressed through the courts, not through the *Act*.

Neither the allegations from the employer that equipment was missing nor the allegations that there had been jobs not accounted for have any bearing on the fact that overtime was not paid.

In the event that the employer wishes to pursue these allegations the employer must pursue them through the Court system.

ANALYSIS

Yeomans has not shown that the Determination was wrong in any respect.

The Determination concluded, correctly in my opinion, that Section 4 of the *Act* applied to the alleged agreement between Yeomans and Anderson that the latter would work for \$18.00 an hour, with no overtime. The agreement was one which purported to waive the minimum requirements of the *Act*, in this case the overtime provisions. Section 4 states:

4. *The requirements of this Act and the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.*

For the purposes of administering the *Act*, Section 4 gives no effect to agreements that provide less than the minimum statutory benefits contained in the *Act*. Based on Anderson's work schedule, an application of the minimum standards provided in the *Act* required Yeomans to pay him overtime wages if he worked more than 8 hours a day or more than 40 hours in a week. Simply put, it was not open to Yeomans and Anderson to agree that Anderson would not be paid according to the minimum standards.

The *Act* does not cover all matters of dispute that may arise between an employer and employee. As noted above, the Determination concluded that the allegation Anderson used equipment owned by Yeomans to conduct personal business and had not paid for the use of that equipment and the allegation that Anderson removed some property belonging to Yeomans when he quit his employment were not matters that could be adjudicated under the *Act*. There is nothing in the appeal or in the material that would indicate that conclusion was wrong and, in fact, based on the description of the matters in dispute, it was correct.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 7, 2000 be confirmed in the amount of \$3883.76, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal