

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 -

Newlands Systems Inc. and Accent Stainless Steel Manufacturing
("Newlands")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 98/408

DATE OF DECISION: June 22, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Newlands Systems Inc. and an associated company, Accent Stainless Steel Manufacturing Ltd. (Newlands) against a Determination as to quantum issued by a delegate of the Director of Employment Standards (the “Director”) on April 8, 1999. In an earlier determination involving Newlands, the Director’s delegate found the complainant, Nimesh Patel (“Patel”) was a manager under the Employment Standards Regulation and thus was not entitled to overtime pay. Patel appealed the determination, and in BC EST #D577/98, I found that Patel was an employee and cancelled the earlier determination. I referred the case back to the Director for the calculation of the amounts owed to Patel.

Pursuant to the Decision BC EST #D577/98, the Director’s delegate calculated that Newlands owed Patel \$23,916.93 for overtime, vacation pay and interest.

Newlands applied for a reconsideration of the original Decision and did not make any submission on the quantum on the grounds that the Decision was incorrect with respect to Patel’s status as an employee so that it did not owe any money to him.

This decision is based on written submissions.

ISSUE TO BE DECIDED

The issue to be decided in this case is whether the Director’s delegate calculated the amount of overtime, vacation pay and interest owed to Patel correctly.

FACTS

Patel worked for Newlands from October 11, 1994 through March 27, 1998. Newlands terminated him because of a reduction in the volume of its business. Patel filed a complaint with the Employment Standards Branch claiming overtime pay. After an investigation, the Director’s delegate decided that Patel was a manager under the Employment Standard Regulation and issued a determination to that effect. Patel then appealed the determination. After reviewing evidence from both parties and the delegate’s submission, I concluded that Patel was an employee under the Employment Standard Regulation and referred the case to the Director for calculation of the amount owed to Patel.

The Registrar of the Tribunal informed Newlands on March 11, 1999 that a delegate of the Director would meet with the parties to make a finding with respect to the amounts owed to Patel. She further stated that if the parties were unable to resolve the issue, the

delegate would inform the Tribunal of the parties' positions and the delegate's conclusion regarding quantum. Finally the Registrar told Newlands that the Tribunal would only consider a request for reconsideration after the process of calculating the quantum was completed.

The Director's delegate analyzed Patel's records of time worked and concluded that he had worked 717 hours of overtime, which was the equivalent of 1075.5 straight time hours. Patel stated that he took 117 hours off, and Newlands had paid him \$5,191.51 upon his termination. The delegate based Patel's entitlement on an hourly rate of pay of \$27.64. He calculated that Patel was entitled to \$26,492.94 in overtime pay (958.5 hours x \$27.64), plus 4 per cent vacation, less the \$5,191.51, for a total of \$22,361.15, plus interest.

The Director's delegate presented these calculations to Newlands on March 26, 1999 and asked Newlands to review its files and advise him of its conclusions. Newlands did not reply, and the delegate informed the Tribunal on April 8, 1999 of his calculations, with the addition of \$1,555.78 in interest for a total owing of \$23,916.93.

After receiving the Determination of April 8, 1999, the Registrar of the Tribunal asked Newlands if it accepted the calculations in the March 26 and April 8, 1999 letters. Newlands replied on April 13, 1999 asserting that it believed that it did not owe Patel any money and explained how it calculated the \$5,191.51 it had paid Patel at the time of his termination.

On April 15, 1999, the Registrar of the Tribunal informed Patel and Newlands that she would proceed with the adjudication of the quantum. Newlands reiterated its assertion that Patel was a manager and not entitled to further compensation. Patel commented on Newlands's calculation of the money paid to him when he was terminated, arguing that the hours credited to him had been reduced to reflect the payment of \$5,191.51, which Newlands had described as "premiums on the overtime that has been worked since the start of record keeping."

ANALYSIS

Newlands took the position that it would not comment on the calculation of the quantum owed to Patel until its request for reconsideration had been completed. It submitted no evidence to challenge the calculations of the Director's delegate, despite a clear statement from the Registrar of the Tribunal that the reconsideration would not proceed until the issue of the quantum was resolved.

A delegate of the Director filed a reply to Newlands. The thrust of the Director's argument is that the purposes of the statute, including "efficient procedures for resolving disputes" would be best served by deciding the quantum before the reconsideration took place. He stated:

The Director is of the view that the purposes of the *Act* are best obtained if the Tribunal deals with the issue of the amount of wages owed because of the contravention, to learn now what agreement, if any, there is between the parties on this issue. Then the Tribunal can deal with both issues at the same time; it can reconsider the decision which found there to be a contravention, and if upon reconsideration it finds a contravention to have occurred, the amount of wages owed. Two issues, one hearing, rather than two issues, two hearings.

The Director's argument is persuasive. If the reconsideration upholds the original Decision, then a single procedure, either a hearing or decision based on written submissions, can resolve all issues outstanding between the parties if the quantum is decided in advance of the reconsideration. To accept the position Newlands advanced would open the possibility for yet another hearing to determine the quantum if the reconsideration were to find that Patel was an employee.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of April 8, 1999 is confirmed in the amount of \$23,916.93, plus any interest that has accrued since the date of issuance, pursuant to Section 88 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal