

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 -

Dennis Stocking
("Stocking")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Hans Suhr

File No.: 98/218

Date of Decision: June 11, 1998

DECISION

OVERVIEW

This is an appeal by Dennis Stocking (“Stocking”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated March 31, 1998 issued by a delegate of the Director of Employment Standards (the “Director”). Stocking alleges that the delegate of the Director erred in the Determination by concluding that Stocking was not owed overtime wages. The Director’s delegate concluded that Hidden Meadow Ranch, Division of G 640 Holdings Ltd. (“Hidden Meadow”) had contravened Section 21 of the *Act* and ordered Hidden Meadow to repay the amount of \$339.38 to Stocking.

PRELIMINARY ISSUE

The delegate of the Director notes in his submission dated April 29, 1998 that Stocking has submitted information in the nature of calendar pages to the Tribunal which were not submitted to the delegate of the Director during the investigation of the complaint.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. Is the information provided by Stocking to the Tribunal “new” information which should have been provided during the course of the investigation ?
2. If the information is not “new” information, is Stocking is owed overtime wages ?

FACTS

The following facts are not in dispute:

- Stocking was employed by Hidden Meadow as a labourer (farm worker);
- The period for which payment of overtime wages is in dispute is the period commencing the week of May 11, 1997 to the week ending June 21, 1997 ;
- Stocking’s rate of pay was \$8.00 per hour;
- Stocking’s hours worked were marked on a calendar;
- Stocking filed a complaint with the Employment Standards Branch on June 20, 1997 alleging non payment of overtime;
- The Record of Employment (“ROE”) issued by Hidden Meadow on June 26, 1997 indicates that the last day for which Stocking was paid was June 19, 1997;

Stocking states that the hours paid as indicated on the payroll stubs should be used for the purposes of calculating overtime wages rather than the hours written on the calendar. Stocking further states that the calendar pages submitted with his complaint did not have his final hours of work noted for the week of June 15-21, 1997.

Hidden Meadow states that Stocking was paid based on the hours provided by Stocking and that no further wages are owing. Hidden Meadow further states that based on the records, Stocking worked a total of 332 hours and was paid a total of \$3,508.00 which means that there was a overpayment.

The delegate of the Director states that the calendar pages attached to Stocking's complaint form only indicated work up to June 12, 1997 and that is the information upon which the Determination was based.

ANALYSIS

The requirement for the payment of overtime wages to a "farm worker" are set forth in the *Employment Standards Regulation* (the "*Regulation*") Section 23 which provides:

"Section 23, Overtime for farm workers

An employer who requires or allows a farm worker to work more than 120 hours within a 2 week period must pay the farm worker for the hours in excess of 120 at least double the regular wage."

This regulation sets forth that in order to receive overtime wages, a farm worker must **work** in excess of 120 hours within a 2 week period.

The only record of hours **worked** by Stocking are the calendar pages submitted.

With respect to the issue of the "new" information consisting of the calendar pages which indicate work performed during the week of June 15 - 21, that was raised by the delegate of the Director, I make the following observations:

- Stocking's complaint form indicated that he worked until June 20, 1997;
- The pay stub on which the illegal deduction of \$326.00 appears is dated June 20, 1997 and based on the information from Hidden Meadow is for payment up to June 20, 1997;
- The ROE issued by Hidden Meadow on June 26, 1997 indicates that Stocking's last day paid was June 19, 1997;

The information regarding hours worked by Stocking after June 12, 1997 and up to June 20, 1997 was certainly available to the delegate of the Director at the time of conducting the investigation. The delegate could have cleared up any ambiguity between the hours recorded on the calendar pages submitted with the complaint and the hours claimed to have been worked by Stocking on his complaint form by requesting from Hidden Meadow a copy of the ROE and comparing that information with the information contained on the pay stubs and complaint form.

For all of the above reasons, I conclude that the information regarding hours worked up to June 20, 1997 and submitted by Stocking to the Tribunal is not “new” information which was not submitted during the investigation rather it is information that was available but not considered by the delegate of the Director. It is appropriate that this information be considered by this Panel in dealing with this appeal.

The information provided on the calendar pages submitted indicates that Stocking worked the following hours in each week of the period May 11 to June 21, 1997:

Week of	Hours Worked	hours worked in 2 week period
May 11 - 17	55.5	
May 18 - 24	79	134.5 (14.5 hours overtime)
May 25 - 31	66	
June 1 - 7	57	123 (3 hours overtime)
June 8 - 14	69	
June 15 - 21	39.5	108.5
Total hours worked	366	(348.5 Straight time, 17.5 O.T.)

Based on the hours as outlined above, Stockings earnings for this period should have been:

348.5 x \$8.00	= \$2,788.00
17.5 x \$16.00	= \$ 280.00
sub-total	= \$3,068.00
+ 4% vac.pay	= \$ 122.72
TOTAL	= \$3,190.72

The pay stubs indicate that Stocking was paid a total of \$3,607.69 (includes the \$326.00 illegal deduction).

For all of the above reasons, I conclude that Stocking is not owed any overtime wages by Hidden Meadow.

The appeal by Stocking is therefore dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated March 31, 1998 be confirmed in the amount of \$ **339.38** together with whatever further interest may have accrued, pursuant to Section 88 of the *Act*, since the date of the issuance.

Hans Suhr
Adjudicator
Employment Standards Tribunal