

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 -

Premier Auto Transmission Ltd.
("Premier")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 1998/635

DATE OF DECISION: June 23, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Premier Auto Transmission (“Premier”) against a Determination as to quantum issued by a delegate of the Director of Employment Standards (the “Director”) on March 18, 1999. In an earlier determination involving Premier, the Director’s delegate responded to a complaint from a former employee, Greg Watson (“Watson”). After he resigned his employment, Watson complained that he had worked 8.5 hours per day for the period of his employment, but had never received overtime pay for work beyond 8 hours in a day or 40 hours in a week. The Director’s delegate concluded that on the balance of probabilities, Watson had worked 8 hours per day, as Premier had stated. Watson appealed the determination to the Tribunal, and in BC EST #D051/99 (the “Decision”), I found that Watson had worked 8.5 hours per day and referred the case back to the Director for the calculation of the amounts owed to him.

Pursuant to the Decision, the Director’s delegate calculated that Premier owed Watson \$3,729.06 for overtime, vacation pay and interest.

Premier 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 Watson’s normal workday, 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 Watson correctly.

FACTS

Watson worked for Premier from November 1996 through March 26, 1998, when his resignation took effect. Watson filed a complaint with the Employment Standards Branch claiming overtime pay on the grounds that he normally worked 8.5 hours per day with an unpaid lunch break. Premier stated that Watson normally worked 8 hours per day. Neither Watson nor Premier produced any documentary evidence regarding Watson’s hours of work or the regular shift schedules of his workplace. Based on his investigation, the Director’s delegate decided that Watson normally worked 8 hours per day and issued a determination to that effect. Watson then appealed the determination. After reviewing evidence from both parties and the delegate’s submission, I concluded that Watson had

worked 8.5 hours per day. The Decision to that effect was issued on February 11, 1999, and the case was referred to the Director for calculation of the amount owed to Watson.

Further to the Decision, the Director's delegate issued a document on February 17, 1999 setting out the basis of his calculations of the amounts owed to Watson. The document in question was handwritten on an internal message form of the Employment Standards Branch, but contained an understandable set of calculations. The delegate provided the calculations to the parties and discussed them with both Premier and Watson on February 23, 1999.

On March 9, 1999, Premier filed a request for reconsideration with the Tribunal, setting out a number of reasons that the original determination should be upheld. The appeal did not address the amount owed to Watson. The Registrar of the Tribunal informed Premier on March 10, 1999 that the Tribunal would not proceed with a reconsideration "until the issue of quantum is resolved." The Registrar asked Premier if it was disputing the quantum. If Premier did dispute the quantum, then the Tribunal would not proceed with the reconsideration request until the quantum had been adjudicated by the Tribunal.

Premier wrote to the Director's delegate on March 15, 1999 as follows:

I wish to dispute the amount owed to Greg Watson for reasons which I have written in my submission for reconsideration.

If you have any further questions, please do not hesitate to contact me

On March 18, 1999, the Director's delegate informed the Tribunal that Premier was disputing the amount of wages owed to Watson for the reasons contained in Premier's letter of March 15, 1999. He attached the memorandum containing the calculation, and referred the matter to the Tribunal for action.

Premier replied to the Registrar's March 10 letter on March 22, 1999. Mr. Adil Awan, on behalf of Premier, stated, "We have new information he [Watson] has been paid in full." He then summarized the grounds on which Premier sought a reconsideration of the Decision, but without addressing the issue of quantum.

On March 23, 1999, the Registrar wrote to both Watson and Premier, attaching the March 18 letter from the Director's delegate to the tribunal. The Registrar stated either party could reply "on the issue of quantum" by April 6, 1999. On April 3, Watson wrote to the Tribunal stating that he agreed with the calculation, in addition to comments on the request for reconsideration.

On April 7, the Registrar referred the parties to Premier's letter of March 22 and Watson's letter of April 3, 1999, offering them the opportunity to reply. No further correspondence was received.

ANALYSIS

Premier argued that the Decision was incorrect on a number of grounds. While it disputed the amount owed to Watson, Premier submitted no evidence to challenge the calculations of the Director's delegate's, despite a clear statement from the Registrar of the Tribunal that the request for reconsideration would not proceed until the issue of the quantum had been resolved.

In *Re Newlands Systems Inc. and Accent Stainless Steel Manufacturing*, BC EST #D248/99, the Tribunal faced a similar issue. The Tribunal cancelled a determination that found the complainant was a manager. Therefore, the complainant was entitled to overtime pay under the *Act*. The decision also referred the question of quantum back to the Director's delegate. When the delegate produced a calculation, the employer reiterated its arguments that the decision on the status of the complainant was incorrect without challenging the delegate's calculation. The Director argued that the purposes of the statute would be served best by deciding the quantum before the reconsideration took place.

The Tribunal accepted that argument and upheld the delegate's calculation of the amount owed to the complainant, having received no evidence to contradict the delegate's conclusion.

The principles in *Newlands, supra* should apply in this case. When a Tribunal decision refers the issue of quantum back to the Director for calculation, any dispute over the amount owed to the complainant should be resolved before the original decision is reconsidered. In this case, if the reconsideration upholds the Decision, then a single procedure will resolve all issues outstanding between Premier and Watson. If the matter of quantum were left unresolved and the reconsideration upheld the Decision, a second procedure would be necessary to determine the quantum. If the reconsideration upholds the original determination, the single procedure will also resolve the dispute conclusively.

ORDER

For these reasons, pursuant to Section 115 of the *Act*, the Determination of March 18, 1999 is confirmed in the amount of \$3,729.06, plus any interest that has accrued since the date of issuance, pursuant to Section 88 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal