

**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 -

Standard Plumbing and Heating Ltd.  
("Standard")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No.:** 2000/162, 2000/163 & 2000/164

**DATE OF HEARING:** June 12, 2000

**DATE OF DECISION:** July 5, 2000

**DECISION**

**OVERVIEW**

Standard Plumbing and Heating Ltd. (“Standard” or “the employer”) appealed, pursuant to section 112 of the *Employment Standards Act* (the “Act”), three Determinations issued under the authority of the Director of Employment Standards (the “Director”), all dated February 18, 2000.

In one Determination (the “Corporate Determination”), Standard is found to owe Manjit Bhangu \$4,990.07 in overtime wages, vacation pay, statutory holiday pay and interest. The decision is based on the employee’s own record of work. Standard on appeal claims that Bhangu never worked any overtime at all and that Bhangu’s work was as is shown by a record which is provided by the employer.

The other two Determinations impose penalties. One orders Standard to pay \$500 for failing to keep and produce payroll records as the *Act* requires. The other decision orders Standard to pay \$150, it being the second time that Standard has failed to pay wages and vacation pay as sections 17(1) and 58(1) of the *Act* require.

**APPEARANCES**

Nirmal Takhar	For Standard
Manjit Bhangu	On his own Behalf
Amita Sharma	Interpreting for Bhangu

**ISSUE TO BE DECIDED**

Standard has filed appeals and then amended and abandoned those appeals such that I am left with one issue to decide. The issue is the matter of whether the employer has or has not shown that the order to pay overtime wages ought to be varied, cancelled and referred back to the Director for reason of an error in fact or law. Standard began by appealing all three of the Determinations against it, and it appealed all parts of the Corporate Determination, that is, the order to pay vacation and statutory holiday pay as well as the order to pay overtime wages. But by letter dated April 26, 2000, Sarj Gosal, at that point acting as legal counsel for Standard, said that the employer was not disputing the order to pay vacation and statutory holiday pay but only the order to pay overtime wages and the penalties. I was further advised by Nirmal Takhar of Standard, at the hearing which I conducted on the 12<sup>th</sup> of June, that the employer had decided to abandon its two penalty Determination appeals and that it at that point was concerned only with the order to pay overtime wages.

**FACTS**

The matter of how many hours were worked is a matter on which Standard and Bhangu differ greatly. According to the employer, Bhangu earned \$15 an hour and he never worked any

overtime at all. According to Bhangu, the employer paid him only \$8 an hour and he worked overtime as listed on a calendar.

If Standard ever kept a daily record of work by Bhangu, the employer does not have that record now. Standard produces paycheques and payroll records, rather incomplete records, that provide only what are said to be the total number of hours worked each month.

Bhangu's calendar record is for each day of work. The delegate, satisfied as to its accuracy, has based her Determination on the calendar record.

The delegate has given little or no weight to letters which Standard provided during the course of the delegate's investigation and which are submitted for consideration, once again, on appeal. The letters are form letters which the employer had people sign. There are 14 of the letters in total. In each of the letters, some person appears to say that they never worked any overtime. But on interviewing 7 of the 14 letter signers, the delegate reports that 6 said they did work overtime, with 4 saying that they worked 10 hour days and longer. Moreover, 3 said they were paid \$8 an hour, for overtime included, and one other person said he received \$9 an hour even on working overtime.

Standard, on appeal, claims that some of the people that the delegate interviewed do not speak English, only Punjabi, and that they did not understand what was being asked of them. I find that it is far more likely that if there was something which was not understood that it is Standard's form letter, not the delegate's questions. The form letter is in English while the interviews conducted by the delegate were with the assistance of a delegate who is fluent in Punjabi.

What remains of Standard's appeal is a complaint that some of the persons interviewed by the delegate are disgruntled former employees. Standard has, on appeal, neither submitted clear evidence that any of the persons interviewed by the delegate are in fact disgruntled employees, nor acted to show me that anyone failed to tell the delegate the truth.

## ANALYSIS

The *Act*, section 27, requires that an employer provide employees with wage statements which explain their paycheques and show hours worked as well as other information.

- 27** (1) On every payday, an employer must give each employee a written wage statement for the pay period stating all of the following:
- (a) the employer's name and address;
  - (b) the hours worked by the employee;
  - (c) the employee's **wage rate**, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
  - (d) the employee's **overtime wage rate**;
  - (e) **the hours worked by the employee at the overtime wage rate**;

- (f) any money, allowance or other payment the employee is entitled to;
- (g) the amount of each deduction from the employee's wages and the purpose of each deduction;
- (h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for;
- (i) the employee's gross and net wages;
- (j) how much money the employee has taken from the employee's time bank and how much remains.

(my emphasis)

And the *Act* requires that employers keep records as follows:

- 28** (1) For each employee, an employer must keep records of the following information:
- (a) the employee's name, date of birth, occupation, telephone number and residential address;
  - (b) the date employment began;
  - (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis;
  - (d) **the hours worked by the employee on each day**, regardless of whether the employee is paid on an hourly or other basis;
  - (e) the benefits paid to the employee by the employer;
  - (f) **the employee's gross and net wages for each pay period**;
  - (g) each deduction made from the employee's wages and the reason for it;
  - (h) the dates of the statutory holidays taken by the employee and the amounts paid by the employer;
  - (i) the dates of the annual vacation taken by the employee, the amounts paid by the employer and the days and amounts owing;
  - (j) how much money the employee has taken from the employee's time bank, how much remains, the amounts paid and dates taken.

(again, my emphasis)

In this case, Standard failed to keep records as the *Act* requires. On interviewing persons that work or once worked for Standard, a delegate of the Director was told by six of the seven persons

that she was able to interview that what the employer does have in the way of records is a false record of pay and hours worked. On the other hand, what those six persons had to say was consistent with Bhangu's claim. His calendar record appearing reliable in all respects, the delegate proceeded to base her Determination on that record.

Standard alleges on appeal that the employee's calendar record is wrong and that the truth of matters is not as the delegate was led to believe through her interviews. But as Standard has presented matters to me, it has not shown that to me. It has not provided clear evidence that the employee's calendar record is wrong in some way. It has not shown that the delegate was not understood by any of the persons which she interviewed, nor is it shown that any of them failed to tell the truth. I am not shown that the Determination is wrong in any way.

**ORDER**

I order, pursuant to section 115 of the *Act*, that the Corporate Determination dated February 18, 2000 be confirmed in the amount of \$4,990.07 and to that amount I add whatever further interest has accrued pursuant to section 88 of the *Act*.

The Determination which imposes a penalty of \$500 is confirmed.

The Determination which imposes a penalty of \$150 is confirmed.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**