

Appeals

- by -

Patrick Ash op. as Spartan Refrigerator
(“Ash”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Cindy J. Lombard

FILE No.: 2001/810 and 2001/811

DATE OF HEARING: April 19, 2002

DATE OF DECISION: June 17, 2002

DECISION

APPEARANCES:

Patrick Ash on behalf of Patrick Ash, operating as Spartan Refrigeration
Debra Willard, bookkeeper
Alan Fontaine on his own behalf.

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Patrick Ash operating as Spartan Refrigeration (“Ash”) of two Determinations which were issued on October 26, 2000, as follows:

- 1) That Ash owed to its employee, Alan Fontaine (“Fontaine”) regular wages, daily and weekly overtime, minimum daily pay, statutory holiday pay and vacation pay including one week wages and vacation pay in lieu of notice plus interest pursuant to Section 88 of the *Act* in the total amount of \$2,849.96.
- 2) That Ash had contravened Part 4 and Part 7 of the *Act* and imposed a penalty of \$150.00 for each contravention for a total penalty of \$300.00. If Determination 1) is confirmed the Appellant does not dispute the penalty determination.

ISSUES TO BE DECIDED

- 1) Was the Determination correct in its finding that Fontaine was owed overtime wages?
- 2) Was the Determination correct in its conclusion that the employer Ash could not withhold wages due to Fontaine because he owed the employer monies, namely, the employee’s share of payroll remittances.

FACTS

Ash owns and operates a refrigeration business, Spartan Refrigeration. Fontaine was employed by Ash between June 12, 2000, and January 23, 2001, as a sheet metal worker at a wage of \$16.00 per hour.

According to Ash

Fontaine did not work overtime hours. Where Fontaine’s worksheets note time exceeding 8 hours are in fact a summary total of more than one day’s work recorded on a single date. Fontaine recorded more than one days work on the last day worked.

According to Fontaine

Fontaine says that he recorded time worked and travel time on the date the work and travel occurred and on no other date. Therefore, he is owed overtime.

ANALYSIS

1) Was the Determination correct in its finding that Fontaine was owed overtime wages?

The time sheets recorded and submitted by Fontaine support his evidence that he recorded time worked and travel time only on the actual date worked.

For example, the first two weeks of July 2001:

Saturday, July 1	7.5 hours
Monday, July 3	6.0 hours
Tuesday, July 4	6.0 hours
Wednesday, July 5	12.0 hours
Thursday, July 6	10.0 hours
Friday, July 7	11.0 hours
Sunday, July 9	11.5 hours
Monday, July 10	6.0 hours
Tuesday, July 11	10.0 hours
Wednesday, July 12	14.0 hours
Thursday, July 13	9.0 hours

There is no evidence that the conclusion made by the Director is wrong on this issue.

2) Was the Determination correct in its conclusion that the employer Ash could not withhold wages due to Fontaine because he owed the employer monies, namely, the employee's share of payroll remittances.

The employer, Ash, says that Fontaine's payroll remittances were not always deducted. There was no evidence presented by Ash to support this claim or to show that the Director was wrong on his conclusion denying Ash's request that the amount of these remittances be deducted from Fontaine's wages.

ORDER

Pursuant to Section 115 of the *Act*, the two Determinations dated October 26, 2000, are confirmed.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal