

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

North American Construction (1993) Ltd.
("NAC")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Jim Wolfgang

FILE NO.: 96/411

DATE OF DECISION: September 23, 1996

DECISION

OVERVIEW

This is an appeal by North American Construction (1993) Ltd. (“NAC”), pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. CDET 003235 issued by a delegate of the Director of Employment Standards (“Director”) dated July 5, 1996. In this appeal NAC claims it owes no further wages to Dale Simmonds (“Simmonds”).

ISSUE TO BE DECIDED

What rate of pay is Simmonds to be paid for the period he was employed by NAC ?

FACTS

Simmonds graduated from the pre-apprenticeship program at New Caledonia College.

Simmonds was hired on April 1, 1996 by NAC as an apprentice carpenter, at the Prince George Waste Water Treatment Plant, which is a fair wage site. He was laid off on May 16, 1996.

NAC did not register Simmonds as an apprentice under the *Apprenticeship Act*.

Simmonds filed a compliant with Employment Standards June 4, 1996 claiming wages. On the form he indicated he was represented by a Union, C.L.A.C.

Determination No. CDET 003235 was issued by the Director on July 5, 1996 in the amount of \$3,441.48. The amount was revised on July 10, 1996 to \$2,196.41.

NAC appealed the Determination on July 10, 1996

ARGUMENTS

NAC claims that Simmonds specifically requested work as an apprentice carpenter at the time of hire. He had recently graduated from a pre-apprenticeship school and wanted an employer to sponsor him.

NAC claims it approached Mike Brunn of the Ministry of Skills and Development requesting Simmonds registration. A meeting was scheduled between Brunn and Pat Blais, Project Manager for NAC, for mid April but the meeting was delayed until the end of April. A further meeting was scheduled for May 14, 1996 for Brunn to interview the apprentices. Brunn returned on May 23, 1996 to complete the interviews and registration and was informed Simmonds had been laid off. As Simmonds was no longer employed Brunn indicated that Simmonds file would be discarded.

NAC claims it was willing to follow through on his registration after Simmonds was terminated but Simmonds said "Forget it".

NAC further states that Simmonds requested to be placed with a clean-up crew because it was easier for him than carpentry work.

NAC claims Simmonds should not be entitled to the Labourer's wage rate as he was not a "skilled Labourer".

ANALYSIS

The following references were cited by the delegate of the Director as having a direct bearing on this case. Section 14 of the *Apprenticeship Act* states:

"An apprenticeship agreement may be filed with the director of apprenticeship who may register it. An apprenticeship agreement relating to a designated trade has no effect unless registered by the director."

The manual "British Columbia Secondary School Apprenticeship - Guidelines, Procedures and Best Practices" states:

*"If workplace - based training will occur in a compulsory apprenticeable occupation or if the work falls under the Skills Development and Fair Wage Act, regulations state that individuals must be registered or certified **prior** to working on site."*

It further states,

"The Apprenticeship Branch will not recognize hours worked in a compulsory occupation while the worker was not registered as an apprentice."

Finally, Section 4 of the *Skills Development and Fair Wage Act* states:

Trade Qualifications,

4.(1) Subject to subsection (2), all employees of the contractor, subcontractor or any other person doing or contracting to do the whole or any part of the construction to which this Act applies to must

(a) be registered under the Apprenticeship Act.

(b)

Simmonds Record of Employment supplied by NAC lists his occupation as “Labourer”.

It is obvious that Simmonds should not have been hired by NAC as an apprentice carpenter until after he was registered. He is therefore entitled to be paid at the lowest pay rate shown in Schedule 3 which is labourer.

Section 43 of the *Act* indicates where a collective agreement is in effect the entitlement to overtime falls within the grievance procedure. As a result I have not dealt with this matter

ORDER

Pursuant to Section 115 of the Act, I order that Determination No. CDET 003235 be confirmed.

Jim Wolfgang
Adjudicator
Employment Standards Tribunal

JW:sr