

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 -

Wigmar Construction (B.C.) Ltd.
("Wigmar")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/316

DATE OF DECISION: May 6, 2001

DECISION

OVERVIEW

This is an appeal by Wigmar Construction (B.C.) Ltd. (“Wigmar”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. CDET 002210 which was issued by a delegate of the Director of Employment Standards on May 7, 1996. In this appeal Wigmar denies that it contravened the *Skills Development and Fair Wage Act* when it employed Steven J. Hodder (“Hodder”) during July, 1995.

I have reviewed and considered Wigmar’s submission and the information provided to the Tribunal by the Director’s delegate. My decision, based on that review, is that the Determination should be confirmed.

ISSUE TO BE DECIDED

At what wage rate is Wigmar required to pay Hodder?

FACTS

The Determination found that Wigmar owed Hodder wages and interest totalling \$389.33 pursuant to Section 3(6) of the Skills Development and Fair Wage Regulation. That finding was based on payroll documents, which were provided to the Director’s delegate by Wigmar, showing that Hodder was employed as an Apprentice Carpenter at a wage rate of \$10.81/hour plus \$2.14/hour for benefits. The Director’s delegate also found that Hodder was not “...registered under the *Apprenticeship Act* and did not hold a certificate of apprenticeship.” For these reasons, the Determination required Wigmar to pay Hodder as a labourer/helper at the rate of \$19.90/hour plus \$4.00/hour for benefits.

Hodder worked a total of 35 hours while employed by Wigmar on a “fair wage” project at Edward Milne Community School.

ANALYSIS

The relevant part of 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) hold a British Columbia certificate of apprenticeship,

(c)

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.”

Wigmar makes the following arguments in support of its appeal:

- Hodder was hired as a carpenter apprentice. This means he either held a certificate of apprenticeship or he would be registered as a new apprentice.
- Hodder quit after working for 35 hours so we were unable to determine if he held a certificate nor were we able to sign him up as an apprentice.
- The labourer rate should not apply to individuals who either claim they have a certificate or are hired with the knowledge that they are to be registered as an apprentice as a condition of their employment.
- We therefore claim that the rate of remuneration paid in this instance is correct under the circumstances.

Wigmar does not dispute that Hodder was employed on a “fair wage” project.

Section 4(1) of the *Skills Development and Fair Wage Act* requires **all** employees to be registered under the *Apprenticeship Act* or to hold a certificate. Hodder was not registered as an apprentice, nor did he hold a certificate.

Section 5 of the *Skills Development and Fair Wage Act* requires all employees to paid wages in accordance with the *Skills Development and Fair Wage Regulation*. Because Hodder was not registered as an apprentice he is entitled to be paid at the lowest wage rate in Schedule 3 of the *Skills Development and Fair Wage Regulation* (i.e. the “labourer” wage rate).

The responsibility for complying with Part 2 of the *Skills Development & Fair Wage Act* rests with the employer (i.e. the contractor or sub-contractor). Thus, it was Wigmar’s responsibility to ensure that Hodder complied with the trade qualifications which are set out in Section 4(1).

For all these reasons, I dismiss Wigmar’s appeal.

ORDER

I order, under Section 115 of the *Act*, that Determination No. CDET 002210 be confirmed.

Geoffrey Crampton

Chair
Employment Standards Tribunal

GC:sf