

An appeal

- by -

Tim A. Purdy  
("Purdy" or "Employee")

- 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:** Paul E. Love

**FILE No.:** 2002/220

**DATE OF DECISION:** June 25, 2002

## DECISION

### OVERVIEW

This is an appeal by an employee, Tim A. Purdy (“Employee”), from a Determination dated April 3, 2002 (the “Determination”) issued by a Delegate of the Director of Employment Standards (“Delegate”) pursuant to the *Employment Standards Act*, R.S.B.C. 1996, c. 113 (the “Act”). Neither party kept records, as the Employer treated Mr. Purdy, as an independent contractor at the request of the Employee. The Delegate had conflicting information before him, and was not in a position to speculate on the wage bargain of the parties. It was apparent that Mr. Purdy was an employee, and that he earned wages in excess of minimum wage. The Delegate found an entitlement to vacation pay on the sum of \$8,000 earned. The Employee alleges bias and error on the part of the Delegate and claims that he was entitled to wages in the of \$9,200 including \$7,000 in wages, vacation pay of \$1,200 and deductions from wages for propane, groceries, and parts in the amount of \$1,000. The burden is on the appellant to show any error. Here, given the dealings of the parties, it was impossible for the Delegate to determine any wage entitlement. The appellant did not demonstrate any error in the Determination, and therefore I confirmed the Determination.

### ISSUE

Did the Employee establish any error in the findings of the Delegate with regard to entitlement to wages?

### FACTS

I decided this case after considering the submissions of the Employee, Employer and the Delegate.

Tim A. Purdy was employed by his step-father’s company, Geriatric Logging Ltd., and worked between May 2000 to April 6, 2001 as a faller, skidder operator, buckerman, mechanic and foreman. Geriatric Logging Ltd. is involved in the interior logging industry, in the Mackenzie area.

The Employer indicated that it kept no records concerning Mr. Purdy’s employment, because Mr. Purdy requested that the Employer treat him as an independent contractor, and the Employer relied on Mr. Purdy and treated him as an independent contractor. After an extensive analysis, set out in the Determination, the Delegate found that Mr. Purdy was an employee. The Employer has not filed an appeal of this finding.

The Delegate indicated in the Determination that neither party kept records, and he was not prepared to speculate concerning the rate of pay or hours worked by Mr. Purdy, in the absence of any records or evidence of the agreed rate of pay. The Delegate determined that Mr. Purdy was paid either \$8,000 as suggested by the Employer or \$6,000 as alleged by the Employee, and in any event the amount received was greater than the minimum wage of \$8.00 per hour, based on 6 days per week, and 4 hours per day. The Delegate concluded that Mr. Purdy was not owed regular wages for the period in question. The Delegate issued a Determination in the amount of \$337.59, which represented vacation pay on the amount of \$8,000, at 4 % plus interest.

The Delegate appears to have rejected the evidence of Mr. Purdy that he worked 40 to 60 hours per week for the period January 4, 2001 to April 6, 2001. Mr. Purdy alleged that he was to be paid \$5,000 per month for the period January 4, 2001 to April 6, 2001. The Employer claimed that this was the rate agreed to by the parties for work performed in 2000.

The Delegate awarded vacation pay to Mr. Purdy based on 4 % of the amount of \$8,000 which Mr. Purdy claimed he was paid by the Employer, together with interest of \$17.59.

### ***Employer's Argument***

The Employer's position appears to be that at one point in time the company did pay him \$5,000 per month for a different job. Mr. Purdy was treated by the Employer as an independent contractor or junior partner. When the Employer obtained a "new contract in early 2001, the Employer told Purdy that it could not afford to pay the same rate, but would pay a "fair rate".

### ***Employee's Argument***

Mr. Purdy filed an appeal claiming that he was "shafted" by the Delegate, and that the Delegate and Grant Martin were acquaintances from the past. He submitted that he does not know anyone in the logging industry who works \$8.00 per hour and 4 hours per day. In his complaint to the Employment Standards Branch he claimed the sum of \$9,200 consisting of \$7,000 in wages for the period February 2001 to April 2001, vacation pay of \$1200, for the period May 2001 to April 2001, and deductions from wages for propane, groceries, parts for pickup in the amount of \$1,000. He submitted that he "deserved to be paid the \$5,000" he was originally paid. In a subsequent submission made June 4, 2002, Mr. Purdy submitted that every job he has had in his life has been as a result of a verbal agreement.

### ***Delegate's Argument***

The Delegate denies the allegation of bias. The Delegate says that in the absence of records, it would be inappropriate for him to speculate what those earnings might have been.

## **ANALYSIS**

In an appeal under the *Act*, the burden rests with the appellant, in this case, the Employee to show that there is an error in the Determination, such that the Determination should be canceled or varied. In this case the Delegate found that he was unable to determine a rate of pay for Mr. Purdy, based on the conflicting versions of the facts, put forward by the parties, and the lack of documents. I have carefully reviewed the submissions of the parties, and cannot prefer one version of the facts over the other. I am not satisfied that the Employee has shown an error in the findings of the Delegate.

While the Employee alleged a bias on the part of the Delegate, I dismiss this argument as it is entirely without a supporting factual foundation: *Central Park Veterinary Hospital*, BC EST # D532/98.

## **ORDER**

Pursuant to s. 115 of the Act I order that the Determination dated April 3, 2002 is confirmed.

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**Paul E. Love, Adjudicator**  
**Employment Standards Tribunal**