

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 -

Ronald E. Jubb
(the "Employee")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/199

DATE OF HEARING: June 23, 2000

DATE OF DECISION: July 18, 2000

DECISION

APPEARANCES:

Mr. Ronald E. Jubb (“Jubb”)

on behalf of himself

OVERVIEW

This is an appeal by the Employee pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on March 8, 2000. The Determination concluded that Jubb was not owed wages by the Employer.

THE FACTS AND ANALYSIS

The appellant has the burden to show that the Determination is wrong.

Jubb was employed by Autotek, which operates an auto repair business in Vancouver. He worked for the Employer between November 29, 1999, as an auto paint technician. The dispute centres around the hourly rate and the hours for which Jubb is entitled to be paid.

According to the Determination, the Employer’s records indicated that Jubb worked 57.5 hours and was paid \$25.00 per hour. The Employer’s position was that no further wages were owed. Jubb explained to the delegate that he answered an advertisement placed by the Employer stating that the rate of pay was \$25.00, but that the Employer told him that her would be paid “on a flat rate system. According to the Determination Jubb claimed entitlement to be paid for 91.1 hours. Before the Determination was issued, the delegate concluded that Jubb was owed \$33.00. The Employer paid this amount.

As I understand it, the Employer submitted the payroll information to the delegate in the form of a letter, stating the dates and hours of work. The Employer did not provide time cards or any other documentation in support. Jubb submitted a summary of hours and a copy of the estimate forms.

Jubb participated in the hearing via telephone; the Employer did not attend. The Employer notified the Tribunal that it did not intend to attend the hearing.

At the hearing, Jubb testified under affirmation. He explained that he had been working for an employer in Chilliwack at a “flat rate” of \$22.00 per hour when he answered the Employer’s ad for a painter. He also explained that he had been working in the auto painting trade for some 35 years, and always on a “flat rate”. He had a brief interview with the Employer and agreed to start working for a “flat rate” of \$25.00 per hour. He was interested in working for the Employer because he perceived it to be a good opportunity to work for a “shop: with a high volume of cars and, thus, earn a substantial income from his efficiency and productivity. Jubb explained that the “flat rate system meant that he would be paid according to the hours estimated on the I.C.B.C. forms, which were submitted to the Tribunal and to the delegate. For example, if a paint job was estimated to take 5 hours, Jubb would be paid for 5 hours at his rate of pay, \$25.00, regardless of the actual time

involved with the job. If he completed the job in 2 hours, he would be paid 5 multiplied by \$25.00, \$125.00; if he completed the job in 10 hours he would still be paid \$125.00. The “flat rate” system is the practice in the industry. Jubb also disputes the hours in the letter from the Employer. He says that his actual hours exceeded those hours. His only concern is to be paid according to the “deal” he made with the Employer. I find Jubb’s testimony credible and I accept his explanation. In the result, I conclude that he is entitled to be paid for 94.6 hours (91.1 plus 3.5 hours for cleaning filters at the shop). I further conclude that he is entitled to be paid at the rate of \$25.00.

I understand that the Employer may have paid for some 57.5 hours at the \$25.00 per hour rate. If that is the case, obviously, the Employer is not required to pay that amount again. The Employer must pay to Jubb the difference between the hours paid for and the 94.6 hours. I refer the Determination of the exact amount owed back to the Director.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated March 8, 2000, be referred back to the Director to determine the amount owed in accordance with the above.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal