

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 -

Kevin Hilliard
("Hilliard")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/556

DATE OF DECISION: August 1, 1997

DECISION

OVERVIEW

This is an appeal by Kevin Hilliard (“Hilliard”) under Section 112 of the Employment Standards Act (the “Act”) against a Determination which was issued on July 2, 1997 by a delegate of the Director of Employment Standards. The Determination found that no overtime wages were owed to Hilliard by Prins Greenhouses Ltd. Hilliard appealed the Determination on July 21, 1997.

ISSUE TO BE DECIDED

The issue to be decided is whether the Determination meets the requirements of the *Act*.

ANALYSIS

The Determination against which this appeal has been made is reproduced below:

Dear Mr. Hilliard:

Re: Complaint made under the *Employment Standards Act*

I have now completed my investigation of your *Employment Standards Act* complaint against Prins Greenhouses Ltd.

Allegations

In your complaint you alleged you were owed for overtime pay.

I have completed my investigation into these allegations. These are my findings:

The salary you were paid and the job description indicate you were a manager. As such you are excluded from the overtime provisions of the Act by section 34 of the Regulation.

Your complaint will now be closed on our file.

Section 81(1)(a) of the *Act* reads as follows:

81.(1) On making a determination under this Act, the director must serve any person named in the determination with a copy of the determination that includes the following:

(a) the reasons for the determination.

Section 81(1)(a) of the *Act* mandates that a Determination must include reasons for the decision. That is, a Determination should explain how and why the Director of Employment Standards or her delegate reached a particular conclusion, both on fact and on law or policy.

In this case, I am not satisfied that the Director's delegate has provided adequate reasons for the decision to reject the claim of Hilliard.

The Determination contains a finding that the employer is not liable for overtime wages because Hilliard is a manager and therefore he is excluded from the overtime provisions of the Act. The apparent reasons for this finding are that Hilliard's salary and job description indicate that he was a manager. In my view, these are not adequate reasons for the finding that Hilliard is a manager and is therefore not owed overtime wages. This Determination does not offer a satisfactory explanation for rejecting Hilliard's claim. For example, the Employment Standards Regulation (section 1) contains a definition of a manager, but the Director's delegate makes no reference to that definition in his findings, and provides no information on how his findings relate to that definition. There is also no explanation as to why the method of payment (a salary, in this case) is relevant to the decision on whether a person is or is not a manager. Nor are there any particulars concerning Hilliard's job description, or information concerning the work he actually performed while employed at Prins Greenhouses Ltd. On the whole, there is no clear and adequate rationale for the decision that Hilliard is a manager.

One of the purposes of the Act, as set out in Section 2, is to "...promote the fair treatment of employees and employers..." Another purpose is to "...provide fair and efficient procedures for resolving disputes..." In my view, neither of these purposes can be achieved in the absence of a clear set of reasons for a decision that either an employee is owed wages or is not owed wages by an employer. In addition, to ensure that the principles of natural justice are met, a person named in a Determination is entitled to know the decision resulting from an investigation and the basis for that decision. Without sufficient reasons, a person cannot assess the decision which includes knowing the case made against them or the case to be met if there is an appeal, and determining whether there are grounds for an appeal.

The Determination under appeal is fundamentally flawed. Insofar as it lacks sufficient reasons, it does not meet the requirements of Section 81(1)(a) of the Act. It also offends the principles of natural justice and is contrary to the intent of the Act.

For the above reasons, I consider this Determination to be null and void.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated July 2, 1997 be cancelled.

Norma Edelman
Registrar
Employment Standards Tribunal