

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-

Fort Optical Ltd. operating Hale Optical

(“Fort Optical”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/197

DATE OF DECISION: July 14th, 1997

DECISION

OVERVIEW

This is an appeal brought by Randy Schuler on behalf of Fort Optical Ltd. operating Hale Optical (“Fort Optical” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on March 7th, 1997 under file number 051330. The Director determined that Fort Optical owed its former employee, Pamm L. Hobbs (“Hobbs”), the sum of \$767.71 on account of one week’s wages as compensation for length of service (and concomitant vacation pay).

ISSUES TO BE DECIDED

The employer says that the amount calculated by the Director as owing on account of one week’s wages is incorrect. The employer also says that it overpaid Ms. Hobbs to the extent of 42 hours’ wages during the month of November 1996.

FACTS

According to the Determination, Hobbs was employed by Fort Optical as a dispensing optician. She was paid a base salary as well as a further amount based on sales volume. The Director, in the absence of payroll records (apparently, the employer did not respond to a Demand for Records--this is the subject of another Determination and appeal), calculated Hobbs’ eight weeks’ termination pay based on the Record of Employment that was provided to Hobbs following her termination on or about January 20th, 1997.

ANALYSIS

The information provided by the employer to the Tribunal in support of its appeal suggests that the Director’s calculation of the amount owing to Hobbs as one week’s wages (based on the formula set out in section 63(4) of the *Act*) may be erroneous. According to the payroll records before me, Hobbs may have only been entitled to an award of \$300.66 plus concomitant vacation pay and interest.

However, I do not have any submission before me from Ms. Hobbs regarding the employer’s calculations and, therefore, am reluctant to make a final order in the absence of a submission from the complainant employee.

As for the employer's assertion that it overpaid Hobbs during the month of November 1996, if that is indeed so, the employer's remedy lies in an action in the Provincial Court of British Columbia rather than by way of an appeal of a Determination awarding Hobbs one week's severance pay. The *Act* does not establish a mechanism for an employer to file a complaint against an employee in regard to an alleged wage overpayment.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated March 7th, 1997 and filed under number 051330, be referred back to the Director.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal