

An appeal

- by -

Owen Simms
("Simms")

- 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: Norma Edelman

FILE No.: 2001/317

DATE OF DECISION: June 11, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") by Owen Simms ("Simms") from a Determination issued by a delegate of the Director of Employment Standards (the "delegate") on March 28, 2001. The delegate found that Burst Natural Products Inc. ("Burst") owed \$38,000.62 in wages to several former employees. Simms, along with two other former employees, appealed the Determination claiming they were owed more wages than the amount calculated by the delegate.

ISSUE TO BE DECIDED

Is Simms entitled to more wages than the amount set out in the Determination?

FACTS AND ANALYSIS

In the Determination, the delegate said:

(Seven) former employees of Burst Natural Products Inc. allege that they were owed vacation pay, regular wages and compensation for length of service when their employer went into receivership on March 6, 2001.

...

Burst Natural Products Inc. (Burst) was in the business of producing bath bomb products, which is under the jurisdiction of the *Act*. Burst is no longer operating and the company is in receivership. Abakhan and Associates Inc. have been appointed Receiver.

...

The employer provided payroll records.

...

Payroll records indicate the complainants are owed regular wages from February 26 to March 5, 2001. Abakhan and Associates Inc., receiver (sic) paid the employees if they worked on March 6 and 7, 2001. Payroll records indicate that vacation pay also was owed to the complainants. The payroll records also indicate that there were other employees that worked from February 26 to March 5, 2001 that were also owed regular wages and vacation pay.

The payroll records indicated that there were employees that were temporarily laid off previous to the company going into receivership that were owed vacation pay.

...The employees of Burst were not given written working notice of termination...The employees that were temporarily laid off and the employees terminated due to the employer going into receivership are entitled to compensation for length of service.

The delegate determined that Burst owed a total of \$38,000.62 in wages to several former employees, including Simms. She found that Simms was owed regular wages and vacation pay in the amount of \$1,438.03 (including interest).

Simms appealed the Determination on April 20, 2001. In his appeal Simms said he was owed an additional amount of \$1,553.83 which represented a NSF cheque.

Burst and the delegate were invited to reply to Simms' appeal. No reply was received from Burst. The delegate forwarded a submission to the Tribunal dated April 26, 2001. In her submission, the delegate said the information provided by Simms was not available when she issued the Determination. She said she agreed that Simms was owed the additional wages and the Determination should be amended to show Simms is owed a total of \$2,999.47 (including interest)

The delegate's submission was forwarded to Burst and Simms for their reply. Neither replied to the delegate's submission.

In an appeal, the burden is on the Appellant to show that a Determination should be varied or cancelled. In this case, I am satisfied that Simms has met the burden to show the Determination should be varied.

Simms claims that he is owed more wages than the amount calculated by the delegate in the Determination. He provided a copy of a NSF cheque to support his position. The delegate agrees with Simms. Burst made no reply to the appeal or to the delegate's submission. Accordingly, I can find no basis to reject Simms' claim that the Determination should be varied to show he is owed the additional amount of \$1,553.83.

I have issued concurrent Decisions (BCEST #D307/01 and BCEST #D309/01) with respect to the other two former employees of Burst who have filed appeals of the Determination. As in this case, I have concluded that their claims for additional wages should be accepted. As a result the total amount of the Determination is varied to \$40,511.23.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated March 28, 2001 be varied to show that Simms is owed \$2999.47 and further that it be varied to show the total amount owed by Burst is \$40,511.23 together with whatever additional interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Norma Edelman
Vice-Chair
Employment Standards Tribunal