

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 -

Jean Pierre Rodrigue
("Rodrigue")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/345

DATE OF HEARING: July 15, 1997

DATE OF DECISION: July 16, 1997

DECISION

APPEARANCES

Diana Lowe on behalf of Jean Pierre Rodrigue

Craig Porayko on behalf of Santana Trucking Ltd. and Lunar Trucking Ltd.

OVERVIEW

This is an appeal by Jean Pierre Rodrigue, under Section 112 of the *Employment Standards Act*, against a Determination which was issued on April 9, 1997 by a delegate of the Director of Employment Standards. The Determination resulted from a complaint by Rodrigue that his employment was terminated without cause and that he was not paid overtime wages, statutory holiday pay and vacation pay as required by the *Act*. The Determination required Santana and Lunar to pay \$973.63 based on a finding that several sections of the *Act* were contravened. The Director's delegate concluded, in part, that "...Rodrigue's claim for overtime is denied as there are no records on which to base an accurate calculation." One of the reasons given by Rodrigue for his appeal was that "...there are records on which to base an accurate calculation of my overtime claim."

A hearing was held at the Tribunal's offices on July 15, 1997 at which time evidence was given by Rodrigue under oath. Various documents for the month of January, 1996 were entered into evidence through his testimony, including "weigh scale tickets", "run sheets", "driver's vehicle check", and "pre-air/pre-trip sheets". The Director's delegate did not attend the hearing. According to the evidence which I heard, similar documents were available for inspection for the period of Rodrigue's employment with Santana and Lunar. On the basis of this evidence I find that it was unreasonable for the Director's delegate to conclude that there are no records on which to base an accurate calculation. I adjourned the hearing at the conclusion of Rodrigue's evidence, with the agreement of all parties, to enable the Director's delegate to conduct a more thorough investigation of Rodrigue's claim for overtime wages.

ORDER

I order, under section 115(1)(b) of the *Act*, that the matter be referred back to the Director's delegate. I further order, under Section 107 of the *Act*, that the Director's delegate review such documents as are available and are relevant to enable him to establish Rodrigue's hours of work and the amount of wages, if any, which are owed. I further order that the Director's delegate conclude this review and inform the parties of his findings on or before September 30, 1997.

Geoffrey Crampton
Chair,
Employment Standards Tribunal