

**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 -

KCT Construction Ltd.  
("KCT")

- of a Determination issued By -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Richard S. Longpre  
**FILE NO.:** 1999/264  
**DATE OF HEARING:** July 7 & 13, 1999  
**DATE OF DECISION:** July 28, 1999

**DECISION**

**APPEARANCES**

Richard Kazemi	On Behalf of KCT Construction
Frank Kazemi	On Behalf of KCT Construction
Jeff Roger	On Behalf of Ron Blanchette
Ron Blanchette	On Behalf of himself

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* by KCT Construction, seeking review of a Determination dated April 12, 1999. The delegate, on behalf of the Director of the Employment Standards Branch, found that KCT had failed to pay Ron Blanchette in accordance with the *Skills Development and Fair Wage Act* (“SDFWA”) for time worked on two specific projects. The delegate found that Blanchette was owed \$7,662.06 for wages, benefits and interest.

**PRELIMINARY ISSUE**

At the out set of the hearing on July 7, 1999, Richard Kazemi informed the panel that he intended to call several witnesses. None of his witnesses was present at the hearing. He also explained that a member of his immediate family had passed away the previous day. For both reasons, he requested an adjournment.

Kazemi agreed that if an adjournment was granted until July 13, he would notify Jeff Roger, counsel for Blanchette, by noon on July 12, of the names of the witnesses he intended to call . This would allow Roger time to prepare for the hearing the following day.

On July 13, the hearing continued. Roger explained that he had not received a call from Kazemi by noon on the previous day. Kazemi explained that he tried to contact Roger prior to noon. Roger said that he had been in office and did not receive a telephone call nor a telephone message. The staff in his office had not received a call from Kazemi. I understand that Kazemi and Roger did have a blunt conversation late in the afternoon. I accepted Roger’s statement that Kazemi did not call before noon on July 12.

Kazemi also requested another adjournment. He wanted to call witnesses that were not at the hearing. I declined the request. After the hearing commenced, Kazemi’s brother, Frank Kazemi arrived at the hearing to give evidence. Roger objected. Frank Kozemi was given the opportunity to argue several points.

**ISSUES TO BE DECIDED**

KCT argued that Blanchette did not work 40 hours each week while he worked on the two projects covered by the *SDFWA*. Further, Blanchette was hired on the basis that he could not perform all work as a carpenter. Kazemi argued that he agreed to work for \$18.00 per hour and not the fair wage under the *SDFWA* of \$21.62 plus \$4.00 for benefits: a total compensation of \$25.62.

**FACTS**

Blanchette applied for a job with KCT. He was a certified carpenter journeyman. Blanchette agreed that he was not able to work in all areas of the trade. Blanchette acknowledged that he agreed to work as a sawyer for \$18.00 per hour. He explained that he intended to work for KCT at \$18 per hour until he qualified for Unemployment Insurance Benefits. Once qualified, he intended to quit working for KCT and to pursue payment of the *SDFWA* wage for hours worked for KCT on the two projects.

Blanchette agreed that he never complained to KCT nor to representatives of the Employment Standards Branch who regularly visited the sites. Blanchette believed that raising the *SDFWA* wage while he was still employed would result in his termination. He intended to have his wage rate addressed when he went on UIC benefits.

Steve Kazemi was the foreman on the two *SDFWA* projects. Blanchette said that he drove Steve Kazemi to the *SDFWA* work site each day. He explained that after the first week of his employment with KCT, he was no longer required to fill out a time sheet. The time sheet was filled out by Steve Kazemi.

Kazemi is the president of KCT. Frank Kazemi was the head foreman of the work sites. They said that they saw Blanchette working on other sites during the period he was suppose to be working on the *SDFWA* projects. They explained that there had been a rift in the family and they were concerned their brother, Steve, had Blanchette and other KCT employees, working on unrelated projects.

Blanchette testified that on two of the days when he was scheduled to work on the *SDFWA* projects, he worked on Steve Kazemi's house. Blanchette worked two other weekends on the brother's house. Kazemi and Frank Kazemi said they saw Blanchette working on a project in the Westwood Plateau area. Blanchette agreed but explained that his complaint to the Employment Standards Branch did not cover the time worked at that project.

In presenting Blanchette's case, Roger pointed out a suspicious fact in KCT's record of hours worked by Blanchette. Blanchette's recorded hours of work, when multiplied by the *SDFWA* wage rate of \$25.62, results in virtually the same total sum as Blanchette's actual rate of \$18.00 multiplied by 40 hours for each of the weeks Blanchette worked for KCL. Roger argued that KCT amended its record so as to try and show it was paying Blanchette the *SDFWA* wage rate on *SDFWA* projects. To do so, KCT had to record fewer hours worked.

**ANALYSIS**

At the outset, Blanchette acknowledged that he agreed to work at the *SDFWA* projects at a lesser wage rate. An employer and an employee do not have the jurisdiction to agree to breach the *Skills Development and Fair Wage Act*. Blanchette had to be paid accordingly.

Kazemi and Frank Kazemi learned during the late stages of the *SDFWA* projects that Steve Kazemi used another family owned company to employ KCT employees to work on other projects. They believed that Blanchette was one of those employees. The delegate found that not to be correct.

KCT had the onus to prove its appeal of the delegate's Determination. This was explained to Kazemi at the outset of the hearing on July 7. He was given the opportunity to call witnesses that worked directly with Blanchette. None of these witnesses was present at the July 13 hearing.

Kazemi and Frank Kazemi raised several allegations. They were not able to establish any of these allegations. Kazemi acknowledged this towards the end of the hearing. Further, Blanchette was able to respond to each of the allegations. I note that the delegate's findings were supported by other evidence.

Kazemi provided no basis to overturn the delegate's finding that Blanchette worked a 40 hour week throughout his employment with KCT - except for the two days he worked at Steve Kazemi's home. Except for those two days, KCT's appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Employment Standards Act*, the April 12, 1999 Determination is varied to this extent: sixteen hours should be deducted from the total hours the delegate found that Blanchette worked under the *Skills Development and Fair Wage Act*. I refer the matter back to the delegate to base her decision on Blanchette working 1014 hours under the *Skills Development and Fair Wage Act*. Wage rate entitlement, benefit entitlement and interest should be determined accordingly.

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**Richard S. Longpre**  
**Adjudicator**  
**Employment Standards Tribunal**