

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 -

Bill Peacey operating as
“Performance Plus Auto cleaning”
 (“ Peacey ”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 2000/383

DATE OF DECISION: August 8, 2000

DECISION

OVERVIEW

This is an appeal brought by Bill Peacey operating as “Performance Plus Auto Cleaning” (“Peacey”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on May 8th, 2000 under file number ER 081679 (the “Determination”).

The Director’s delegate determined that Peacey owed his former employee, Paul Galisky (“Galisky”), the sum of \$3,677.02 (including interest) on account of unpaid vacation pay for 1998 and 1999, unpaid overtime pay earned in 1998, unpaid statutory holiday pay and other wages earned during 1999 and two weeks’ wages as compensation for length of service.

ISSUES ON APPEAL

In a memorandum appended to his appeal form, Peacey asserts that the Determination is incorrect inasmuch as:

- Galisky was paid all statutory holiday pay to which he was entitled;
- Galisky was paid for all hours worked at the agreed hourly rate of \$10;
- Galisky was paid all of the vacation pay to which he was entitled.

Furthermore, although not specifically put into issue in his “reasons for appeal”, it appears that Peacey also challenges the delegate’s finding that Peacey did not have just cause to terminate Galisky’s employment.

ANALYSIS

In addition to the notice of appeal and an attached handwritten memorandum that sets out the reasons for appeal, the only other documents submitted by Peacey to the Tribunal are:

- an “Attendance Record” (two pages) purportedly showing Galisky’s working hours for the period August 1998 to September 1999;
- copies of various “Performance Plus Auto Cleaning” cheques made payable to “Paul Galisky”;
- copies of wages statements relating to Paul Galisky; and
- a handwritten one-page ledger purportedly showing Galisky’s hours worked and pay received in 1998.

As can be seen, there is *nothing* before me relating to the issue of just cause and, accordingly, given the absolute dearth of evidence on this point, the employer's oblique suggestion that it had just cause for termination must be rejected for want of proof. I shall now turn to the other issues raised by this appeal.

Statutory Holiday Pay

Part 5 of the *Act* provides that, after 30 calendar days of employment, employees are entitled to a paid day off on all statutory holidays or, in the event they work on a statutory holiday, certain premium pay plus another paid day off. I have reviewed all of the wage statements provided by the employer—*none* of them indicate or otherwise account for the payment of *any* statutory holiday pay. Thus, there is no evidence before me to substantiate this ground of appeal.

Unpaid wages

As noted above, Peacey says that his agreement with Galisky was that the latter would be paid "\$10 for all hours worked" and that Galisky was paid in full in accordance with that agreement. However, Part 4 of the *Act* requires that employees be paid overtime pay at premium rates relative to the base hourly wage. The obligation to pay overtime is triggered after 8 hours in a day or 40 hours in a week. Any agreement to work what would otherwise be "overtime hours" at "straight-time" rates is proscribed by section 4 of the *Act*.

For the pay period from April 1st to 15th, 1999, the "Attendance Record" shows that Galisky worked 68 hours; the wage statement for the same period, however, shows that Galisky was paid for 104 hours at an hourly rate of \$10 per hour. Clearly these two documents are inconsistent and, in any event, the wage statements do not itemize *any* payment on account of overtime pay even though, on the face of it, Galisky must have worked some overtime during the April 1st to 15th pay period.

I note that the documents in evidence before me contain similar discrepancies with respect to other pay periods.

Vacation Pay

Section 58 of the *Act* provides states that an employee with less than 5 years' tenure is entitled vacation pay at the rate of 4% of total wages earned. I have reviewed the wage statements and cannot find *any* itemization with respect to vacation pay. Thus, there is simply no evidence before me to show that Galisky was paid *any* vacation pay in accordance with the dictates of the *Act*.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$3,677.02** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal