

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 -

Richard Bucknell
(" Bucknell ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Cindy J. Lombard

FILE No.: 2000/395

DATE OF DECISION: August 14, 2000

DECISION

OVERVIEW

Pursuant to Section 115 of the *Employment Standards Act* (the “Act”), I issued an Order that the Determination of the Director of Employment Standards (the “Director”) issued on October 12, 1999, with respect to the findings that Bucknell quit his employment with Desilets Trucking be cancelled and that this matter be referred back to the Director to determine the amount of money due to the appellant-employee, Bucknell, for three weeks’ wages in lieu of notice plus whatever interest may have accrued pursuant to Section 88 of the *Act*.

The Director issued a Report dated June 8, 2000, finding after a review of the payroll records of Desilets Trucking that Bucknell was entitled to:

$\$14,077.42 \div 8 = \$1,759.68 \times 3 =$	$\$5,279.03$
Annual vacation pay (4% of \$5,279.03)	\$211.16
Interest required under Section 88	<u>\$701.62</u>
	\$6,191.81

Desilets Trucking says that Bucknell was laid off due to work shortage on March 20, 1998, returned to work on June 1, 1998, and left that employment on June 30, 1998, and calculates three weeks’ wages due to Bucknell as follows:

March 1 – 20, 1998 (3 weeks)	22 days worked – gross	\$6,215.49
June 1 – 30, 1998	18 days worked – gross	<u>\$6,754.38</u>
		\$12,969.87

$\$12,969.87 \div 8 = \$1,621.23 \times 3 = \underline{\$4,863.69}$ being the amount due in lieu of notice.

ISSUE TO BE DECIDED

What amount is due Bucknell for three weeks wages in lieu of notice?

FACTS AND ANALYSIS

Section 63(4) of the *Act* states the method of calculating the amount the employer is to pay on termination in lieu of notice is as follows:

63(4) The amount the employer is liable to pay becomes payable on termination of the employment and is calculated by:

- (a) *totalling all the employee's weekly wages, at the regular wage, during the last 8 weeks in which the employee worked normal or average hours of work,*
- (b) *dividing the total by 8, and*
- (c) *multiplying the result by the number of weeks' wages the employer is liable to pay.*

I have reviewed the payroll records submitted by Desilets Trucking. The dates described by Desilets Trucking i.e. March 1 to 20, 1998, and June 1 to 30, 1998, total just 7 weeks and not 8 as required by Section 63(4), while the Director's calculation is correctly based on the last 8 weeks in which the employee worked normal or average hours.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination of the Director in this matter dated June 8, 2000, that Desilets Trucking pay to Bucknell the sum of \$6,191.81 be confirmed together with whatever further interest that has accrued pursuant to Section 88 of the *Act*.

Cindy J. Lombard
Adjudicator
Employment Standards Tribunal