

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-

Associated Professional Insurance Services Ltd.
(the "Appellant")

-of a Determination issued by-

The Director of Employment Standards
(the "Director")

ADJUDICATOR: E. Casey McCabe

FILE NO.: 97/373

DATE OF HEARING: July 28, 1997

DATE OF DECISION: July 31, 1997

DECISION

APPEARANCES

Kummiker Rangi	for Associated Professional Insurance Services Ltd.
Hari Partap Singh	for himself
Jagjit Dhatt	for himself
Santosh K. Chaudhary	for herself
No one	for the Director of Employment Standards

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Determination dated May 2, 1997. That Determination found that Associated Professional Insurance Services Ltd. (the employer) had violated Sections 17, 18, 40 and 63 of the *Act* and ordered the employer to pay the amount of \$3,598.01 to Jagjit Dhatt; \$4,490.30 to Santosh K. Chaudhary; and, \$10,461.08 to Hari Partap Singh.

ISSUE(S) TO BE DECIDED

1. Is Hari Partap Singh owed overtime as claimed?
2. Is Jagjit Dhatt owed overtime and compensation for length of service as claimed?
3. Is Santosh K. Chaudhary owed overtime as claimed?

FACTS

The employer operates a general insurance agency selling personal insurance, commercial insurance and I.C.B.C. policies. The employer has offices on Kingsway in Vancouver, Main Street in Vancouver and another office in Surrey. Mrs. Chaudhary and Mr. Singh at all material times worked in the Kingsway office. Mr. Dhatt worked in both the Kingsway and Surrey offices. The employees claim that they were not paid overtime for hours worked contrary to Section 43 of the *Act* and Mr. Dhatt claims that he was not given compensation pay for length of service upon his termination.

The employer argues that the records used by the Director's Delegate to determine the hours worked and the calculations that flowed from that determination are incorrect. Further the employer argues that the real employer is a Gill Insurance Services Company Ltd. rather than Associated Professional Insurance Services Ltd.

At the commencement of the hearing Mr. Rangi sought an adjournment. He asked that a summons be issued for a Rachhpal Saggu who was the former general manager during the relevant period of time regarding the claims made by Singh, Dhatt, and Chaudhary. Mr. Rangi stated that Mr. Saggu was no longer in his employ and that he did not know where Mr. Saggu was currently employed. He stated that he had made some efforts to contact him by telephone but that Mr. Saggu had not returned the calls. He stated that it was necessary to have Mr. Saggu appear to give evidence about the manner in which the office was administered and particularly how the payroll was calculated. Mr. Rangi stated that during the material times he was often sick and that it was Mr. Saggu who was in charge of the office. However, Mr. Rangi did concede that he was not sick for the entire period of time and that he often did come into the business office on Kingsway.

I declined to grant the adjournment. The employer was notified on June 27, 1997 that a hearing in the matter would be held on July 28, 1997. That provided sufficient time for the employer to prepare its case and to seek a summons if necessary. I note from the file that the employer retained legal counsel to seek a suspension of the Determination pending the filing and processing of an appeal although legal counsel did not appear on behalf of the employer at the hearing. I determined that the employer was aware of the process and had sufficient time to prepare its case. The Tribunal's processes are meant to be a quick and efficient means of settling employment disputes. I was not prepared to grant further delay in this matter especially in the face of the employer's statement that it did not know the whereabouts of Mr. Saggu.

ANALYSIS

The employer argued that it was necessary to have Mr. Saggu present to give evidence about the hours worked and the manner in which the payroll was administered. However, I note from the file material that the Director's Delegate states that Mr. Rangi was not available during the investigation process and did not cooperate with the investigation. I also note that copies of the time sheet were presented at the hearing by the respondents and it was from these time sheets that the Director's Delegate made his calculations. Mr. Rangi argues that he had no knowledge of the time records and that he only signed the pay cheques. I do not accept that evidence as sufficient to contradict the payroll records which are a copy of the time sheets marked by each employee on each day of work and which were kept at the employer's premises. If the employer wished to challenge those business records the time to do so was during the investigative procedure and not at the hearing. (see *Tri-West Tractor Ltd.* (1996) BC EST No. D268/96)

The employer further argues that the real employer is Gill Insurance Services Company Ltd. I am not prepared to accept that argument. The evidence discloses that the employees were paid on Associated Professional Insurance Services Inc. pay cheques drawn on that company's account. The evidence also discloses that Gill Insurance and Associated Professional Insurance Services Inc. operate out of the same premises and use the same phone number. Mr. Rangi testified that he is the sole owner of Gill Insurance Services Company Ltd. but that he has two partners in Associated Professional Insurance Services Inc. Mr. Rangi argues that because it is Gill that issues the T4 slips for income tax purposes that it is really Gill that should be seen as the employer and not Associated Professional Insurance Services Inc.

The individual respondents stated that at the time of hire each one was told that the employer was Associated Professional Insurance Services Inc. The employees produced copies of pay cheques showing Associated Professional Insurance Services Inc. as the employer and Mr. Dhatt produced a Record of Employment showing Associated Professional Insurance Services Inc. as his employer. The employees each stated that they perceived Associated Professional Insurance Services Inc. to be their employer. I find that Associated Professional Insurance Services Inc. is the true employer of these employees.

The employer further argues that it should not be liable for Mrs. Chaudhary's claim because she is a Level 3 Agent and is exempt under the *Act*. Mrs. Chaudhary stated that despite the fact she holds a Level 3 license she was not employed as a Level 3 Agent at Associated Professional Insurance Services Inc. Rather she states that she was employed as an insurance sales person and that the reason for that was that she had separated from her husband and wanted to work at a lesser position with lesser responsibility during the stressful period of her marital problems. Mrs. Chaudhary stated that she did not perform any of the duties expected of a Level 3 Agent and in particular she remained on salary rather than commission. She further stated that she only sold I.C.B.C. policies to walk in customers and that this was quite distinct from a Level 3 Agent who would sell primarily personal and commercial policies on commission. I note that the parties agree that Mr. Saggu was considered the Level 3 Agent in this office. I find that although Mrs. Chaudhary holds a Level 3 certification she was not functioning in that capacity and therefore is not exempt from the provisions of the *Act*.

In summary I find that the employer was aware of the nature of the proceedings and had sufficient notice to prepare its case. The employer failed to cooperate during the investigative procedure and it is Tribunal policy not to allow litigants to sit in the weeds and attempt to have the case reopened on appeal. Furthermore, I am not convinced that Mr. Saggu could offer anything more to the file than that which is already on record or given by Mr. Rangi. Finally, I find that the true employer is Associated Professional Insurance Services Inc. For the above reasons I dismiss the appeal.

ORDER

I confirm the Determination of the Director dated May 2, 1997 in this matter.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal