

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-

Theodore Michael Hlokoff
(the “Appellant”)

-and-

Sue Hlokoff operating as Hlokoff Trucking
(the “Respondent”)

-of a Determination issued by-

The Director of Employment Standards
(the “Director”)

ADJUDICATOR: E. Casey McCabe

FILE NO.: 97/384

DATE OF HEARING: July 14, 1997

DATE OF DECISION: July 31, 1997

DECISION

APPEARANCES

Theodore (Ted) M. Hlokoff	for himself
Sue Hlokoff	appearing for Hlokoff Trucking
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 April 28, 1997. In a complaint dated March 17, 1997 Ted Hlokoff complained that he was owed regular wages for work performed from January 1996 to November 1996; annual vacation pay for earnings from January 1995 to October 27, 1996; reimbursement for an N.S.F. cheque in the amount of \$375.00; repayment of loans made to his employer in the amount of \$1,889.80; and, reimbursement for an overload ticket in the amount of \$280.00 for a total of \$7,044.80. The Director’s Delegate dismissed the complaint.

ISSUE(S) TO BE DECIDED

Is Ted Hlokoff owed regular wages and annual vacation pay? Are reimbursement of an N.S.F. cheque, repayment of loans made to the employer and reimbursement of an overload ticket as detailed above wages?

FACTS

Ted Hlokoff and Sue Hlokoff, prior to November 1996, operated Hlokoff Trucking. In November of 1996 the couple separated. It was the evidence of both Ted and Sue Hlokoff that Sue operated the company during a period relevant to this complaint, that is, from January 1995 through to October 27, 1996. Ted Hlokoff worked during this time as an employee performing duties as a truck driver and mechanic with occasional estimating duties. Mr. Hlokoff is no longer employed by the company and the couple have engaged in civil proceedings regarding their matrimonial claims. Sue Hlokoff continues to live and operate the business from Abbotsford, British Columbia. Ted Hlokoff currently lives in Nimpo Lake, B.C.

In support of his claim on appeal Ted Hlokoff filed letters dated May 27, 1997 and June 1, 1997 enlarging the basis of his claims of March 17, 1997. In particular, Ted Hlokoff claimed a sum of \$8,620.62 which was an amount owing on a Mastercard account that had been used by Hlokoff Trucking and both the Hlokoffs personally. Ted Hlokoff also claimed the interest that was accruing on the unpaid amounts. Mr. Hlokoff also submitted an itemization for expenses incurred during the course of his employment for jobs at Boston Bar and Nimpo Lake. The amended claim included an amount for profit sharing on two jobs and a claim for a job which was done in which Ted Hlokoff paid for certain materials but the customer paid Hlokoff Trucking by cheque without reimbursement to Ted Hlokoff. The amended claim also included an item for costs and the cost of hiring a chartered accountant to advise Ted Hlokoff on his position with Revenue Canada since Hlokoff Trucking had not issued him T4 slips for 1995 or 1996. The claim also included an amount for reimbursement of Unemployment Insurance benefits that were lost because Hlokoff Trucking did not supply a Record Of Employment in a timely manner. As a result Ted Hlokoff was disqualified from benefits for a period of approximately six months from December 1995 until June 1996. The claim dated June 1, 1997 also included an item for welding on one of the subcontractor's equipment and claims for work paid at a premium rate in the September 1 to 15, 1996 pay period.

I will not go into great detail with respect to the claims made on the June 1, 1997 letter nor to the arguments that were presented by both parties on the merits. The Tribunal has a policy in place that prohibits appellants from raising new grounds on appeal. (see *Kaiser Stables* (1997) BC EST No. D058/97) The effect of Ted Hlokoff's amended claim is to raise the amount of his original claim from \$7,044.80 to \$34,033.47. I do not accept that the items in the amendment are simply more expenses of the type that were itemized in the March 17, 1997 original complaint. The claims go beyond those expense claims and indeed include a claim for time not paid in the September 1 to 15, 1996 time period.

Furthermore, notwithstanding Tribunal policy, I find that the expenses claimed are not those contemplated in the definition of wages under the *Act*. For example, the Mastercard expenses are expenses associated with the operation of Hlokoff Trucking. It may be that Ted Hlokoff has paid certain of those expenses in the form of payments to Mastercard from his personal account. However, that does not mean that he is able to claim from Hlokoff Trucking those expenses as wages. The same can be said for the expenses incurred in the operation of the business for the job at Boston Bar and certain of the expenses at the Nimpo Lake job. I will deal with the Nimpo Lake hydro bill and B.C. Tel phone expenses later. Additionally, I am satisfied that there was no agreement between Ted Hlokoff and Sue Hlokoff regarding profit sharing for the job at the Seven Oaks Mall and the jobs at Nimpo Lake. Nor is the cost that Ted Hlokoff incurred in hiring a chartered accountant to deal with Revenue Canada regarding his T4 slips reimbursable as wages. I further find that his claim for expected losses due to fines, penalties etc. for failing to file 1995 and 1996 tax returns do not qualify as wages under the *Act*.

Mr. Hlokoff has claimed costs including the cost of the trip from Nimpo Lake to meet with the Director's Delegate and telephone bills. Costs are not recoverable for actions under the *Act*. I lack jurisdiction to award costs.

Ted Hlokoff has also asked for reimbursement for Unemployment Insurance benefits that were lost due the failure of Hlokoff Trucking to file, in a timely manner, Records Of Employment. The net effect of the failure to file these Records of Employment was that Ted Hlokoff was not able to claim benefits for the period of December 1995 through to June 1996. Thereafter, a Record of Employment had been filed and he was able to initiate a new claim. Regardless, I do not see where lost U.I. benefits qualify as wages under the *Act*.

ANALYSIS

I turn now to the particulars of the claim dated March 17, 1997. The evidence discloses that Ted Hlokoff's gross earnings for 1995 were \$21,906.50 and his gross earnings for 1996 were \$13,833.00. His vacation pay was calculated at \$876.26 for 1995 and \$553.32 for 1996. Those figures total \$1,429.58. In 1996 Mr. Hlokoff was paid by means of three cheques. The first cheque is dated November 1, 1996 in the amount of \$3,239.00; the second cheque is dated November 4, 1996 in the amount of \$3,500.00; and the third is cheque dated December 10, 1996 in the amount of \$9,732.97 for a total of \$16,471.97. Sue Hlokoff states that these amounts include the \$1,429.58 for holiday pay. In argument Ted Hlokoff conceded that the amounts may well be included. I agree and find that the amounts are included and that annual vacation pay has been paid. Furthermore, if the 1996 gross and vacation pay are added for a total of \$15,262.58 (\$13,833.00 plus \$1,429.58) the difference remains of \$1,209.39. Sue Hlokoff claims that this is an overpayment but she is not claiming it back from Ted Hlokoff.

Ted Hlokoff continues to claim unpaid regular wages in the amount of \$2,500.00. In particular he claims that the wages arose in work performed for Sharp Construction and Sager Enterprises. Sue Hlokoff claims that Ted Hlokoff was paid his wages for that work and that it was included in the 1996 gross. Ted Hlokoff claims that he should have received monies directly from Sharp Construction and Sager Enterprises and indeed a cheque for \$196.00 from Sager Enterprises which was given to him was directed to Hlokoff Trucking when he should have been allowed to retain it. I think that confusion has arisen on this matter because Sager Enterprises and Sharp Construction paid monies directly to Hlokoff Trucking rather than Ted Hlokoff. Mr. Hlokoff believes that he was entitled to those cheques to set off his claim for wages. I think that Ted Hlokoff is confused in this matter and I do not agree with his argument. I find that he has indeed been paid wages owing for 1996.

Mr. Hlokoff claims \$375.00 for compensation for an N.S.F. cheque. I am not convinced that the N.S.F. cheque is for an amount that can be classified as wages. The cheque arose from a reimbursement for tires that had been credited to Hlokoff Trucking through another driver of Hlokoff Trucking. Ted Hlokoff claims that he reimbursed the credit for these tires from his personal funds. However, I cannot find that that reimbursement was on account of wages.

Ted Hlokoff claims that he paid \$280.00 as an overload ticket which was a fine that was handed to him when he was transporting a load of asphalt which was found to be overweight when he weighed the truck at the Ministry of Transport scales. Sue Hlokoff's position is that drivers are responsible for their own overload tickets. Ted Hlokoff stated that the customer that he was hauling for had stated that he would pay any overload tickets. Sue Hlokoff stated that the customer did not reimburse Hlokoff Trucking for that overload ticket. I cannot find that reimbursement for overload tickets qualifies as wages under the *Act*.

Finally, Ted Hlokoff claims several expenses including payment for tires in the amount of approximately \$1,000.00; payment to I.C.B.C. of \$750.00 on account of damage caused by another driver for Hlokoff Trucking; a payment to a local garage for mechanical repairs on a Hlokoff Trucking truck in the amount of \$500.00; and certain living expenses including telephone and hydro for the Nimpo Lake jobs in the amount of \$1889.89. Under Section 1 of the *Act* "Wages" is defined and there are specific exclusions one of which is subsection (h) which excludes allowances or expenses. I find that the amounts of money expended by Ted Hlokoff on these aforementioned items are expenses which are excluded from the definition of wages.

For all of the above reasons I must dismiss Ted Hlokoff's appeal.

ORDER

I confirm the Determination of the Director dated April 28, 1997 in this matter.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal