

**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-

Five B Produce Inc.

(“Five B”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/248

**DATE OF HEARING:** July 7th, 1997

**BC EST # D348/97**

**DATE OF DECISION:** August 8th, 1997

**DECISION**

**APPEARANCES**

George J. Wool                      Counsel for Five B Produce Inc.  
No appearance                      by Sukhjit Kaur Bains  
No appearance                      for the Director of Employment Standards

**OVERVIEW**

This is an appeal brought by Five B Produce Inc. (“Five B” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on April 2nd, 1997 under file no. ER4-677 (the “Determination”). The Director determined that Five B owed its former employee, Sukhjit Kaur Bains (“Bains”), the sum of \$1,412.89 representing unpaid statutory holiday pay (\$682.39) and two weeks’ wages as compensation for length of service [see section 63(2)(a) of the *Act*].

Although in its appeal documents the employer raised some concerns with respect to its liability for statutory holiday pay, the employer did not, before me, challenge the Determination, or present any evidence whatsoever, with respect to the matter of statutory holiday pay. However, the employer did assert that Bains quit her employment voluntarily and is, therefore, not entitled to any compensation for length of service.

The appeal hearing in this matter was held at the Tribunal’s offices in Vancouver on July 7th, 1997 at which time I heard evidence from Mrs. Veena Banga, a director and officer of Five B. Although properly served with notice of the appeal hearing, Bains did not attend the hearing (nor did she telephone the Tribunal to explain her absence). The Director was not represented at the appeal hearing.

**FACTS**

Five B operates a 40 acre farm in Surrey, B.C. Five B grows various field crops including vegetables and herbs. According to the Record of Employment (“ROE”) issued to Bains on October 1st, 1996, Bains’ employment with by Five B commenced on February 26th, 1996 and ended on September 26th, 1996 due to “illness or injury” (code D on the ROE).

According to the uncontradicted evidence before me, Bains was involved in a motor vehicle accident on or about September 26th, 1996 in which she received injuries that prevented her from continuing her regular employment duties with Five B. The employer’s evidence is that shortly after her motor vehicle accident, Bains called the employer and indicated that she would not be

returning to work and asked for an ROE to be issued. The employer says that it has no objection to Bains returning to work but that she has never requested to do so, perhaps thinking that by returning to work she might compromise her personal injury claim that is now, apparently, in the hands of ICBC.

**ANALYSIS**

The ROE issued by the employer is consistent with the employer's *viva voce* evidence before me.

The Determination states that "There is no indication in the records provided by the employer to indicate that Ms. Bains said she was not returning to work, or that the employer had terminated her sometime after September 26, 1996". However, the Director appears not to have considered the ROE which clearly documents an end of employment as at September 26th, 1996 by reason of the employee's "illness or injury".

In the absence of any contrary evidence from Bains, I am satisfied that the employer's position that Bains voluntarily quit her employment and asked for an ROE to be issued, must be upheld. Accordingly, by reason of section 63(3)(c) of the *Act*, Bains was not entitled to any compensation for length of service.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated April 2nd, 1997 and filed under number ER4-677, be confirmed with respect to the matter of statutory holiday pay (**\$682.39** together with accrued interest pursuant to section 88 of the *Act*) but otherwise cancelled.

---

**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**