

**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.:** 97/257

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

**BC EST # D349/97**

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

**DECISION**

**APPEARANCES**

George J. Wool	Counsel for Five B Produce Inc.
Kamaldeep Dhillon	on her own behalf
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 March 25th, 1997 under file no. ER4-677 (the “Determination”). The Director determined that Five B owed its former employee, Kamaldeep Dhillon (“Dhillon”), the sum of \$298.26 representing one week’s wages as compensation for length of service [see section 63(1) of the *Act*].

In her complaint filed with the Surrey office of the Employment Standards Branch on July 3rd, 1996 Dhillon claimed statutory holiday pay and overtime pay. The Director concluded that Dhillon was entitled to statutory holiday pay and, accordingly, the employer has paid that aspect of the claim in full. The claim for overtime pay was denied because Dhillon, being a “farm worker”, never worked more than 120 hours in any two-week period (see s. 23, *Employment Standards Regulation*). Dhillon has not appealed this latter finding. Thus, the only issue before me is whether or not Dhillon was entitled to one week’s wages as 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 Mr. Mike Banga, a director and officer of Five B, and from Ms. Dhillon. 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. Dhillon’s employment with by Five B commenced in late January 1996; she prepared “pre-packaged salads” for retail sale. On May 29th, 1996, Dhillon was involved in a motor vehicle accident in which she sustained muscle injuries in her back and, as a result, was unable to carry out her usual job duties.

Dhillon’s evidence is that she telephoned Mrs. Veena Banga (Mr. Banga’s wife and also an officer/director/shareholder of Five B) on June 9th, 1996 and was told that Mrs. Banga would make out a new work schedule and call Dhillon back. Not having heard anything further from Mrs.

Banga, Dhillon called her again on June 13th, 1996 only to be told once more that when a new work schedule was available Mrs. Banga would call Dhillon. On June 17th, 1996, Dhillon telephoned Mrs. Banga yet again and was then told that there was no work available for her. A Record of Employment (“ROE”), dated June 17th, 1996, was issued by Five B and mailed to Dhillon.

Dhillon’s evidence regarding her various telephone conversations with Mrs. Banga is uncontradicted, as Mrs. Banga did not testify before me (although she was present at the hearing).

**ANALYSIS**

The ROE, prepared by the employer’s accountant, one “A. Mitchell”, states that the ROE was issued for a reason denoted as “Other” (code K). Tellingly, the ROE does not indicate that it was issued because of “illness or injury” (code D), or because Dhillon “quit” (code E), or because of a “shortage of work” (code A).

I would also note that in the “Comments” section of the ROE the employer states, in part, “No work available when employee phoned Jun 13 (pm) ready to return.” This statement tends to corroborate Dhillon’s evidence that she did not quit her employment and was simply told by Mrs. Banga, in or about mid-June 1996, that there was no work available for her.

There is no evidence before me that the employer paid one week’s wages as compensation for length of service or gave one week’s written notice--indeed, the employer conceded as much at the appeal hearing. In any event, any written notice that might have been given during the period that Dhillon was away from work due to her motor vehicle accident would have been void by reason of section 67(1)(a) of the *Act*.

In my view, on June 17th, 1996 the employer terminated Dhillon without without lawful cause and without paying severance pay or giving notice in lieu thereof and thereby breached section 63 of the *Act*.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated March 25th, 1997 and filed under number ER4-677, be confirmed as issued in the amount of **\$298.26** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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