

An appeal

- by -

Dale G. Kubica

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** Norma Edelman

**FILE No.:** 2001/389

**DATE OF DECISION:** July 5, 2001

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the "Act") by Dale Kubica ("Kubica") from a Determination issued by a Delegate of the Director of Employment Standards (the "Director") on January 19, 2001. The Delegate found that Westrock Timber Company Ltd. ("Westrock") owed wages to two former employees. One of the employees, Kubica, appealed the Determination on the basis that he was owed more wages than the amount calculated by the Delegate.

### ISSUE TO BE DECIDED

Is Kubica entitled to more wages than the amount set out in the Determination?

### FACTS AND ANALYSIS

Following complaints filed by Kubica and another former employee of Westrock, the Delegate found that Westrock owed them a total amount of \$7,814.37. In the Determination, the Delegate said:

Both the employer and the complainants agree there are wages owed. Both parties agree on the amount. The employer states he is willing to pay the complainants however he does not have the funds at this time.

The Delegate determined that Kubica was owed \$2,174.39.

Kubica appealed the Determination on March 23, 2001, after the appeal deadline had expired. In a Decision issued on May 17, 2001, the Tribunal extended the appeal deadline and allowed the appeal to proceed on its merits (*Dale Kubica* BCEST #D242/01).

In his appeal, Kubica said:

...There was two (2) pay summary sheets sent to Employment Standards Branch, the same two I am sending you. Apparently only one was looked at...(A)ctually I am owed \$3,444.77, this for some "reason" was over looked.

Westrock and the Delegate were invited to reply to Kubica's appeal. No reply was received from Westrock. The Delegate forwarded a submission to the Tribunal dated June 11, 2001. In her submission, the Delegate said:

The issue raised by Dale Kubica is valid. There was an error made in the original determination as the wages only reflect wages earned in 2000 and should also include wages earned in 2001.

Should the Tribunal choose to vary the original determination to reflect all wages owing to Dale Kubica, the total would be \$3444.77.

The Delegate's submission was forwarded to Westrock and Kubica for their reply. Neither replied to the Delegate's submission.

The burden is on the Appellant, Kubica, to show that the Determination is wrong and should be varied or cancelled. In this case, I am satisfied that Kubica has met the burden to show the Determination should be varied.

Kubica claims he owed more wages than the amount calculated by the Delegate in the Determination. He provided pay summary sheets for the years 2000 and 2001 to support his position. These documents appear to have been produced by the employer and they clearly show Kubica is owed \$3,444.77. The Delegate agrees with Kubica. Although invited to do so, Westrock did not respond to the appeal. Accordingly, I can find no basis to reject the appeal and I agree that the Determination should be varied to reflect that Kubica is owed \$3, 444.77.

## **ORDER**

Pursuant to Section 115 of the Act, I order that the Determination dated January 19, 2001 be varied to show that Kubica is owed \$3,444.77 and further that it be varied to show the total amount owed by Westrock is \$9,084.75 together with whatever additional interest that may have accrued, pursuant to Section 88 of the Act.

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**Norma Edelman**  
**Vice-Chair**  
**Employment Standards Tribunal**