

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.: 97/260

DATE OF HEARING: July 7th, 1997

BC EST # D352/97

DATE OF DECISION: August 8th, 1997

DECISION

APPEARANCES

George J. Wool	Counsel for Five B Produce Inc.
Sundeep K. Nijjer	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 26th, 1997 under file no. ER4-677 (the “Determination”). The Director determined that Five B owed its former employee, Sundeep K. Nijjer (“Nijjer”), the sum of \$261.77 representing one week’s wages as compensation for length of service [see section 63(1) of the *Act*].

In addition to her claim for compensation for length of service, Nijjer also claimed statutory holiday pay and overtime pay. The Director concluded that Nijjer was entitled to statutory holiday pay and, accordingly, the employer has paid that aspect of the claim in full (by way of a cheque in the net amount of \$249.37).

The claim for overtime pay was denied because Nijjer, being a “farm worker”, never worked more than 120 hours in any two-week period (see s. 23, *Employment Standards Regulation*). Nijjer has not appealed this latter finding. Thus, the only issue before me is whether or not Nijjer 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 Mrs. Veena Banga, a director and officer of Five B, and from Ms. Sundeep K. Nijjer on her own behalf. 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. Nijjer worked at Five B, along with her mother and sister, packaging salad materials and herbs for retail sale.

Nijjer’s evidence was that shortly after her sixteenth birthday in March 1996 she began working at Five B on a part-time basis while she continued her studies as a Grade 10 high school student. She worked on the weekends and during school breaks. When school finished in June 1996, she

continued with Five B on a full-time basis throughout the summer of 1996. Some time in August 1996, Nijjer approached Mrs. Banga and asked if she could continue working on a part-time basis once school was back in session in the fall--Mrs. Banga agreed.

A few days after her mother submitted a WCB claim, in late August 1996, Mrs. Banga told Nijjer that there was "no more work" for Nijjer; a Record of Employment ("ROE") was issued to Nijjer, dated September 3rd, 1996, which states that it was issued because Nijjer was "return[ing] to school" (code C).

Mrs. Banga's evidence is that Sundeep Nijjer was employed for the summer only and that no agreement was ever reached whereby Nijjer would continue on in the fall on a part-time basis.

ANALYSIS

I do not accept the employer's contention that Nijjer's employment was for the duration of the summer only and would not continue on in the fall. First, this is contrary to Nijjer's work history which shows that she worked part-time throughout the winter and spring of 1996 while still a high school student. Second, I find the timing of the termination of Nijjer's employment to be suspicious, at the very least, coming as it did only a few days after the alleged incident that led to her mother filing a WCB claim. Third, if Nijjer was employed only for the "summer", why did her employment end more than a week before school re-opened in the fall--wouldn't she have continued until the end of August so as to earn the maximum amount of money she could during the summer?

I am satisfied that by refusing to continue to schedule Nijjer for full-time work in August 1996, or for part-time work thereafter, the employer effectively constructively dismissed Nijjer. It follows that this appeal ought to be dismissed and the Determination confirmed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated March 26th, 1997 and filed under number ER4-677, be confirmed as issued in the amount of **\$261.77** together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal