

**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 -

Alpine Press (1998) Ltd.  
("Alpine")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No.:** 2000/318

**DATE OF HEARING:** August 10, 2000

**DATE OF DECISION:** August 31, 2000

**DECISION**

**OVERVIEW**

This appeal is pursuant to section 112 *Employment Standards Act* (the “Act”) and by Alpine Press (1998) Ltd. (Alpine”, also, “the appellant”). Alpine appeals a Determination by a delegate of the Director of Employment Standards (the “Director”) dated April 12, 2000. The Determination orders the appellant to pay Kent Leong \$3,069.59 in wages, overtime wages in the main, and interest.

Alpine, on appeal, claims that the delegate is biased and as such she failed to consider important facts. It argues that the order to pay overtime wages is wrong in that Leong asked for additional work and willingly agreed to take on the overtime work for straight-time pay. Finally, Alpine claims that it should not be ordered to pay wages as set out in the Determination because Leong started working for another company and, with that, he put people at risk, his production fell at Alpine, and the company lost customers.

**APPEARANCES:**

Michael Spence	On behalf of Alpine
Patrick Kelly	Witness
Kent Leong	On his own behalf

**ISSUES TO BE DECIDED**

Alpine claims that the delegate is biased. Alpine claims that Leong agreed to work overtime hours for straight-time wages. And Alpine claims that Leong caused harm to the company and that he should be made to pay for that. What I must ultimately decide is whether the employer has or has shown that the Determination ought to be varied or referred back to the Director for reason of an error or errors in fact or law.

**FACTS AND ANALYSIS**

Michael Spence bought Alpine Press on February 13, 1998. He hired the former Alpine Press’ employees. Kent Leong was one of those employees. He operates a printing press.

Leong signed what the employer’s calls its “Confidentiality Agreement”. I find that the agreement merely requires faithful service and that the employee not disclose the company’s secrets. It is of no importance to the appeal.

### The Allegation of Bias

Alpine, on appeal, claims that the investigating officer did not have an unbiased view. Spence makes it clear that the claim is made because, the investigating officer, Shelina Shivji, refused to listen to Alpine's claim, that its agreement with Leong provided that pay was to be at straight-time wages, but said, repeatedly, that that did not matter because she had to apply the law and the law required that Alpine pay overtime. He says that indicates that her mind was made up and that she was not at all open to what he had to say. I find that bias is not shown.

The Determination is not by the investigating delegate. Another delegate made the Determination. I am not given any reason to believe that that officer is biased in any way.

I expect that Shivji was not at all open to what Spence had to say on the overtime issue. But what Spence fails to realize is that it is a delegate's job to apply the law. She is unable to overlook the *Act*. If she appeared at all closed minded on the issue of whether the overtime provisions apply to Alpine, that confirms only that she was just doing what an Employment Standards Branch officer should do.

### The Issue of Overtime Wages

Alpine alleges that Leong asked for extra work in May of 1998 and that when Alpine said that it could not afford to pay overtime wages, as it was a new company just getting started, that Leong offered to work the overtime at regular wages. I find that, most likely, Leong did ask for more work. The employer's weekly statement of work shows that he was receiving relatively little work, almost never 40 hours of work per week.

However, section 40 of the *Act* requires that overtime be paid after 8 hours of work in a day and 40 hours of work in a week.

- 40** (1) *An employer must pay an employee who works over 8 hours a day and is not on a flexible work schedule adopted under section 37 or 38*
- (a) *1 ½ times the employee's regular wage for the time over 8 hours, and*
- (b) *double the employee's regular wage for any time over 11 hours.*
- (2) *An employer must pay an employee who works over 40 hours a week and is not on a flexible work schedule adopted under section 37 or 38*
- (a) *1 ½ times the employee's regular wage for the time over 40 hours, and*
- (b) *double the employee's regular wage for any time over 48 hours.*

Section 4 of the *Act* strikes down any agreement which provides for anything less. The *Act* provides workers with minimum pay and working conditions and, as section 4 makes clear, they are just that, minimum requirements.

- 4 The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to section 43, 49, 61 and 69.*

It follows that even if Leong did agree to work overtime for regular or straight-time wages, the agreement may have no force or effect and Alpine is required to pay overtime as section 40 of the *Act* requires.

### **Payment for What is Alleged to be Harm Done to Alpine**

Leong took a long vacation in the summer of 1998. The employer claims that his demeanor and attitude changed on his return from that vacation. I find that Leong had a falling out with a co-worker, Patrick Kelly.

An employer may not withhold wages. To do so is contrary to section 21 of the *Act*.

- 21 (1) Except as permitted or required by this act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.*
- (2) An employer must not require an employee to pay **any** of the employer's business costs except as permitted by the regulations.*

There is moreover no provision in the *Act* to reduce the amount of wages for reasons such as those raised by Alpine.

Alpine on appeal raises issues that were addressed by the Director's delegate in the Determination. I find that delegate has correctly awarded wages to Leong. As such, I am confirming the Determination.

### **ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated April 12, 2000, be confirmed in the amount of \$3,069.59 and to that add whatever further interest has accrued pursuant to section 88 of the *Act*.

**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**