

An appeal

- by -

Dean Bardon
("Bardon")

- 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.: 2002/353

DATE OF DECISION: August 15, 2002

DECISION

This letter sets out the Tribunal's decision regarding the amount of wages owed by David Jay Derksen operating as Wild West Bagging Co. ("Wild West") to Dean Bardon ("Bardon").

On May 15, 2002, the Tribunal issued Decision # 193/02 in connection with the above-noted appeal. The Adjudicator ordered that the Determination dated December 18, 2001 be referred back to the Director to calculate the amount of overtime and statutory holiday pay owed to Bardon, and to determine if Bardon was entitled to compensation for length of service.

On June 10, 2002, the Tribunal received a submission for the Director's delegate in which he concluded that Bardon was owed a total of \$4306.00 representing overtime wages, statutory holiday pay, compensation for length of service and interest. The delegate found that Bardon was laid off work, he was not recalled and he did not refuse work, and therefore, in the absence of written notice of termination of employment, he was entitled to one weeks wages representing compensation for length of service.

In a letter dated June 26, 2002, the Tribunal invited the other parties to reply to the delegate's submission. Bardon replied that he agreed with the delegate's calculation. No reply was received from Wild West.

This matter has been decided based on the written submissions received by the Tribunal.

I have reviewed the delegate's calculations as they pertain to the issue of overtime and statutory holiday pay. These calculations reflect the directions given by the Adjudicator and I can find no reason to alter the delegate's conclusions regarding the amount of overtime and statutory holiday pay that is owed to Bardon. I also find no reason to alter the delegate's conclusion that Bardon is owed compensation for length of service. The *Employment Standards Act* (the "*Act*") clearly states that an employer is liable to pay compensation upon an employee's termination of employment unless the employee self-terminates his/her employment (such as refusing a recall), receives written notice, retires or is dismissed for just cause. None of these factors are applicable in this case. Therefore Wild West owes Bardon compensation for length of service. Given the foregoing, the following order is made.

ORDER

Pursuant to Section 115 of the *Act* and further to Tribunal Decision #D193/02, I order that the Determination dated December 18, 2001 be varied to show that Wild West owes Bardon \$4306.00 plus, pursuant to Section 88 of the *Act*, any further interest accumulated since June 10, 2002.

Norma Edelman
Vice-Chair
Employment Standards Tribunal