

BC EST # D377/98

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 -

JUTT MOTORS LTD
(“JUTT ”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Paul E. Love

FILE No.: 98/207

DATE OF DECISION: September 17, 1998

DECISION

OVERVIEW

On December 22, 1997 I issued a decision on an appeal, under s. 112 of the *Employment Standards Act* (the “Act”) by Jutt Motors Ltd. (“Jutt”) from a Determination dated October 8, 1997. Jutt employed Pakhar Bains, Harnek Chhiana and Kulwant Singh Dhillion to work at its gas bar. No substantive ground of appeal was raised by the employer, save and except its ability to pay the amounts set out in the Determination. This matter went to reconsideration and at the reconsideration Jutt raised a new issue with respect to the calculation of wages for Kulwant Singh Dhillion for the year of 1995. This argument was affirmed by the Adjudicator and the matter was sent back to me for a recalculation of Dhillion’s entitlement in keeping with the comments of the Reconsideration Adjudicator.

ISSUES TO BE DECIDED

What was the amount of money owing to Kulwant Singh Dhillion?

FACTS

During the course of an investigation, the employer admitted to the Director’s Delegate that Pakahar Bains, Harnek Chhiana and Kulwant Bains worked 40 hours per week at the employer’s gas station. The employer alleged that he took these employees on at that rate after they “begged him” for work. The employer further alleged that the employees were commissioned sales persons. The Director’s Delegate determined that the employees were paid \$5.00, per hour, cash, which is less than the minimum wage of \$7.00. The Director’s delegate calculated the amount owing as of September 30, 1997 to each of the employees as follows:

Harnek Chhiana	\$11,285.00
Pakhar Bains	\$5,438.37
Kulwant Singh Dillion	\$11,391.69

On a reconsideration decision of the Tribunal, the Tribunal sent back to me for recalculation the amount owing to Kulwant Singh Dhillion. The Tribunal found that Dhillion could not have worked 1452 hours in 1995 because he only worked 584 hours in the period October to December 1995. This has to be adjusted from \$5.00 to \$7.00 per hour for the 1995 year. This amounts to \$ 1168.00. The amount owing to Kulwant Singh Dhillion is therefore recalculated as follows:

Minimum Wage Adjustment

1995	\$1,168.00
1996	3,714.00
1997	2,700.00
Sub-Total	7,582.00

Statutory holiday pay 840.00

Vacation pay

4 % x \$16,545	661.80
4% x \$2,700	54.00
4% x \$7,582 (min wage adjust)	303.28
4% stat. Holiday pay (840)	33.60

Total vacation pay 1,052.68

Sub-total owing \$ 9,474.68

Plus interest

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter dated September 29, 1997 in respect of Kulwant Singh Dhillion be varied by ordering Jutt Motors Ltd. deliver to the Director the sum of \$9,474.68, plus interest in accordance with the Act for transmission to Kulwant Singh Dhillion.

Paul E. Love
Adjudicator
Employment Standards Tribunal