

An appeal

- by -

Royal Canadian Legion Branch No. 27  
("The Legion")

- 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:** Irene G. Peters

**FILE No.:** 2002/149

**DATE OF HEARING:** June 18, 2002

**DATE OF DECISION:** August 26, 2002

## DECISION

### APPEARANCES:

Danny O'Shea, for the Legion

Tobbi Gjelsvik, for the Legion

Dorothy Millington-Jones, for the Legion

Peggy Pascual, appearing on her own behalf

No one attended to represent the Branch

### OVERVIEW

This is an appeal by the Royal Canadian Legion Branch No. 27, Prince Rupert (the "Legion"), (the "Employer"), pursuant to Section 112 of the *Employment Standards Act* (the "Act"), from a Determination dated March 4, 2002, by the Director of Employment Standards (the "Director"). In this instance an employee, Peggy Pascual ("Pascual") alleged that she was owed wages for banked time worked for her former employer, the Legion. The issues for the Determination were:

- (a) the number of hours banked by Pascual, for which she had received no payment from the Employer.
- (b) the amount of wages owed to Pascual by the Employer.

The Determination found that the Employer had contravened the Act in that there were a number of hours banked by Pascual for which she had received no payment from the Employer. It was determined that in failing to pay the wages the Employer had contravened Section 42(5) of the Act and that Pascual had banked 442 hours in total; and accordingly, Pascual was owed a total of \$7,143.11 determined by her regular wage and a given hourly rate between February 9, 2000, and February 9, 2001. The Employer kept no record of hours worked by Pascual, but they disputed the number of hours claimed by Pascual and the Determination's reliance upon specific sources of information in determining the hours.

Danny O'Shea, President of the Legion, argued the Appeal on behalf of the Legion and the other two individuals present from the Legion, Tobbi Gjelsvik ("Gjelsvik") and Dorothy Millington-Jones (Millington-Jones"), who were also present. Peggy Pascual appeared on her own behalf. The Director submitted a letter in submission, dated April 22, 2002 and did not have anyone present.

### ISSUE(S) TO BE DECIDED

Was the Delegate correct in relying on a Record of Employment document "ROE" issued to Pascual and signed by acting President, of the Legion, Roger Henderson, to determine the number of hours banked by Pascual?

## FACTS

The Determination sets out the following finding of undisputed facts at page 2:

### Facts not in Dispute

Pascual was employed as the Manager of the Royal Canadian Legion Branch No. 27 in Prince Rupert from 8 February 2000 through February 2001 at which point her employment was terminated by the Employer.

From 9 February 2000 through August 2000, Pascual worked under an employment agreement, which paid her \$850.00 semi-monthly (\$1,700.00/month) for a regular 27 hours per week of work. This agreement also provided that any additional hours worked would be kept track of by Pascual and taken as additional time off.

From 23 August 2000 through February 2001, Pascual worked under an employment agreement, which paid her \$1,360.00 semi-monthly (\$2,720.00/month) for a regular 40 hours per week of work. This agreement also called for any extra hours worked to be banked and taken at a later date as paid time off.

The parties are in full agreement that Pascual was a manager within the meaning of the Act and that she therefore owed neither wages at an overtime rate nor for statutory holiday pay.

## ARGUMENT AND ANALYSIS

The Employer argued that the Record of Employment relied upon was prepared by Pascual and was a false Record of Employment. It was their position that Mr. Henderson, the acting President of the Legion, who signed the Record of Employment, did not have any authority by reason of the Bylaws of the Prince Rupert (Pacific No. 27) of the Royal Canadian Legion Bylaws (the "Bylaws") to overrule the executive branch and sign a Record of Employment that stated as follows:

"do (sic) to financial (restraint) my contract is not renewed".

The Legion argued that Section 8(1) of the Bylaws, which states as follows:

the executive committee of the Branch shall have the power to administer the affairs of the branch, subject to direction by an approval of the general membership prohibited Mr. Henderson, the acting President, from signing a Record of Employment as the executive committee had fired Pascual. The Employer argued that there were two reasons why the Director should not have relied upon the Record of Employment. These two reasons were as follows:

- (a) the executive committee of the branch had the power to administer and since they had fired Ms. Pascal in a special executive meeting held on the 6<sup>th</sup> of February, 2001, Mr. Henderson had no authority to sign the Record of Employment; and
- (b) even if he did have the authority to sign, because he knowingly signed a false document, this document should have not been relied upon by the Delegate.

I note, in review, that Section 10.2 of the Bylaws which is entitled "PRESIDENT AND SECRETARY-MANAGER" states, specifically in 10.2.1:

the President shall exercise general supervision and control over the affairs of the Branch and with the Secretary Manager, shall sign all papers and documents requiring signatures on behalf of the Branch

Based on the Bylaws, I find that Mr. Henderson did indeed have the authority to sign the Record of Employment and I also find that there was no evidence whatsoever submitted on behalf of the Employer that Mr. Henderson knowingly signed a false document.

Mr. O'Shea, on behalf of the Employer, did reargue all of the points raised in the Determination. I will not reiterate the arguments that I heard, but suffice it to say, that they are contained in the written submission, dated March 21, 2001, of the Legion's Appeal Submissions.

The Employer did not appeal the number of hours that the Delegate determined were worked by Pascual, or the hourly rate that was determined by the Delegate. The Employer took an all or nothing approach, so I, therefore, did not have any evidence to reconsider the number of hours that it was determined Pascual had banked and the hourly rate determined.

## **ORDER**

Pursuant to Section 115 of the Act, I order the Determination dated March 4, 2002 be confirmed in the amount of \$7,143.11, together with any interest that has accrued pursuant to Section 88 of the Act.

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**Irene G. Peters**  
**Adjudicator**  
**Employment Standards Tribunal**