

**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 -

Tiger Forest Tree Planting Ltd.  
("Tiger")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Hans Suhr
<b>FILE No.:</b>	97/439
<b>DATE OF HEARING:</b>	August 25, 1997
<b>DATE OF DECISION:</b>	September 17, 1997

## DECISION

### APPEARANCES

Parmajit S. Kular	on behalf of Tiger Forest Tree Planting Ltd.
Tirth Kular	on behalf of Tiger Forest Tree Planting Ltd.
Harpal Singh	on behalf of Tiger Forest Tree Planting Ltd.
Khalid Bajwa	on behalf of Tiger Forest Tree Planting Ltd.
Narinder Singh Grewal	on his own behalf
Jagjit Singh Brar	an observer
Ranjeet S. Walia	Interpreter

### OVERVIEW

This is an appeal by Tiger Forest Tree Planting Ltd. (“Tiger”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated May 14, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Tiger alleges that the delegate of the Director erred in the Determination by concluding that Narinder Singh Grewal (“Grewal”) was owed wages. The Director’s delegate concluded that Tiger had contravened Sections 17, 18 & 58 of the *Act* and owed wages in the total amount of \$2,168.62.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Tiger owes wages to Grewal ?

### FACTS

The following facts are not in dispute:

- Grewal was an employee of Tiger;
- Grewal performed work for Tiger at Quesnel and Burns Lake;

- Tiger issued 2 cheques payable to Grewal in the amounts of \$500.00 dated June 12, 1996 and \$1,102.06 dated August 22, 1996;
- Grewal filed a claim with the Worker's Compensation Board ("WCB") alleging he had suffered a work related injury on July 13, 1996;
- Grewal received wage loss benefits from WCB until November 11, 1996.

Parmajit S. Kular ("P.Kular") gave evidence on behalf of Tiger and stated that:

- Grewal only worked for Tiger from April 22 to June 4, 1996;
- Grewal did not work on June 5, 1996;
- the work in Burns Lake was completed on June 5, 1996 at which time the crew returned to Surrey;
- Tiger continued to pay full wages to Grewal until June 12, 1996 at which time Grewal was laid off;
- on June 16, 1996 the crew went to work at Revelstoke;

Grewal contacted P. Kular's residence and spoke to Kular's spouse on several occasions requesting work;

- Grewal was advised by P. Kular's spouse that she had spoken to her husband and that there was no work available;
- Grewal was persistent and P.Kular's spouse provided Grewal with the name and address of the campground where the Tiger crew was located at Revelstoke;
- Grewal showed up at the Revelstoke location of Tiger on July 13, 1996 and again asked for work;
- in addition to P. Kular, a crew foreman Khalid Bajwa ("Bajwa") was present in the temporary offices of Tiger when Grewal asked for work and was advised that there was no work available for him;
- Grewal did not work for Tiger on July 13, 1996, the date that Grewal claimed he had been injured;

Under cross examination by Grewal, P. Kular stated that:

- the Record of Employment (undated) which shows Grewal worked from April 22 to June 12, 1996 was issued sometime in August when he returned from Revelstoke;
- Grewal's final cheque was issued August 22, 1996;
- Tiger performed work at Revelstoke until August 7, 1996;
- Grewal was paid at the rate of \$10.00 per hour;
- he determined the hourly rate to be paid to each employee after assessing the employee's work for a few days;
- the hourly rates ranged from \$10.00 to \$15.00 or \$16.00;
- he made cash payments Grewal during his period of employment when requested;
- he kept track of the cash payments in a small book and then provided the total of cash advances to the accountant;
- he is not able to identify the dates on which Grewal received cash advances as he doesn't have the small book any longer;
- Grewal signed a document acknowledging receipt of cash in the amount of \$772.00 at the time he was laid off.

Tirth Kular ("T. Kular") stated that:

- she is the spouse of P. Kular but has no interest in the company (Tiger);
- she did not hire Grewal to perform work;
- she did receive telephone calls from Grewal requesting work and the address of Tiger's location at Revelstoke;
- after receiving instruction from her spouse, she provided the Revelstoke address of Tiger to Grewal.

Harpal Singh (“Singh”) stated that:

- he is employed by Parmjit Sohal, C.G.A.;
- he prepares the payroll for Tiger based on information provided by Tiger;
- P. Kular provided figures for cash advances given to Grewal from a small book;
- he prepared the ROE for Grewal’s lay off on August 13, 1996;
- Grewal signed for the cash advances received on August 13, 1996 but no date was put on the document as the cash had been received on several occasions;
- he prepared the pay statement for Grewal’s entire period of employment on August 13, 1996;

Under cross examination by Grewal, Singh stated:

- he confirmed the total of cash advances received with Grewal;
- he prepared 1 cash advance acknowledgment for each employee;
- he only calculated the amounts of the pay cheques, P. Kular prepared the actual cheques.

Khalid Bajwa (“Bawa”) stated that:

- he was a crew foreman for Tiger;
- he was present in Tiger’s temporary office in Revelstoke when Grewal appeared at 7 or 8 p.m. one evening and asked for work;
- P. Kular asked Grewal why he was there as there was no work and he (P. Kular) was not hiring;
- after this conversation Grewal left.

Under cross examination by Grewal, Bajwa stated that:

- he is not exactly sure of the date that Grewal appeared in Revelstoke, it could have been July 13 or 14;
- at the end of each day, he submitted the hours worked by each crew member to P. Kular;
- he worked for Tiger in 1995 and 1996;
- he does not have the small book he recorded the employee's daily hours in;

Grewal stated that:

- prior to working for Tiger, he was employed as a brick layer at the rate of \$10.00 per hour;
- he accepted the job with Tiger as he was promised a rate of \$13.00 per hour;
- usually worked 7 days each week;
- he kept a record of his daily hours on a calendar and the information provided to the delegate of the Director was from that calendar;
- he performed work for Tiger at Quesnel, Burns Lake and Surrey;
- he did not return to Surrey until June 12, 1996;
- he advised P. Kular that he would need some time off as his baby was sick;
- P. Kular provided his home telephone number so that Grewal could telephone when he was available for work;
- when his baby was feeling better, he telephoned P. Kular's home phone number on a number of occasions to advise that he was now available for work;
- T. Kular provided him with the address of Tiger's location in Revelstoke;

- after the last telephone conversation with T. Kular, he advised his family he would be going to work in Revelstoke;
- he traveled to Revelstoke via Greyhound on July 12, 1996;
- upon arrival at Revelstoke, he contacted the campground where Tiger was located and was advised that all of Tiger's personnel were away at work but arrangements would be made to give him a ride to the campground by the campground manager's spouse;
- when P. Kular and the other employees arrived back at the campground he, Grewal, approached P. Kular who was in the temporary office and advised that he was ready for work to which P. Kular responded by informing him to be ready to go early the next morning;
- he began work on July 13, 1996 after travelling 2 - 3 hours to the worksite and his crew supervisor was Amarjit;
- while working he stepped into a hole and injured his left knee;
- a fellow crew member, Sutnam Singh picked him up and, together with another co-worker, helped Grewal back to the crew van where he laid down;
- he was in considerable pain and advised P. Kular upon arrival back at the campground;
- P. Kular provided some tiger balm ointment and an alcoholic beverage and said Grewal should be all right in the morning;
- his knee was swollen and extremely painful in the morning and Grewal requested to be taken to a Doctor;
- P. Kular said to take it easy during the day and they would see him in the evening;
- he again asked to be taken to see a Doctor but was advised by his friends to pack his luggage and return to Surrey for treatment;
- on the morning of July 15, 1996 he took a taxi to the bus depot and then traveled to Surrey via Greyhound;
- he saw his family Doctor in Surrey who referred him to a specialist;

- when he received the WCB forms, Grewal was contacted by Singh, the accountant, who said he would not be entitled to WCB but Tiger would issue an ROE so Grewal could sit back and collect UIC benefits;
- had only received \$500.00 at this point in time from Tiger;
- he received the ROE and a postdated cheque at this time as Tiger said they did not have enough funds to cover the cheque immediately;
- he never received any cash from P. Kular;
- WCB called him and asked why he was afraid to file a claim and Grewal advised them that when he got his cheque cashed, he would call them;
- WCB paid him wage loss benefits to November 11, 1996;
- he later contacted Tiger to ask for the balance of his wages and was told that they still had not been paid by the Ministry of Forests so they could not pay him;
- his Doctor advised him to contact the Employment Standards Branch

In response to questions from the Tribunal, Grewal stated;

- he was not asked by Singh with respect to the cash advances allegedly provided by Tiger;
- he had to sign a number of papers which were lying on top of each other only revealing the line for his signature;
- his family would send him money while he was away from home working for Tiger.

Under cross examination by P. Kular, Grewal stated;

- his recollection is that he worked in the Burns Lake area until June 12, when the crew traveled to Surrey in the company van.

P. Kular presented a letter from the Ministry of Forests purporting to indicate that Tiger had completed their contract in the Burns Lake area on June 5, 1996. I was unable to contact the author of this letter during the hearing and with the consent of all parties, I agreed to contact the author the following week to verify the date on which Tiger's contract was completed.



I subsequently contacted the Ministry of Forests official in Burns Lake on September 3, 1997. This official provided me with the date of completion of actual work by Tiger and further advised me that Tirth Kular had been in contact with him the previous day to tell him that I would be calling him.

## ANALYSIS

I am concerned by the actions of Tirth Kular in contacting the Ministry of Forests official in regard to this matter **prior** to my conversation with him. It would now be totally inappropriate, in my view, for me to consider any of the information provided by the Ministry of Forests in this matter. It must be clearly understood however, that I am not questioning either the credibility or integrity of the Ministry of Forests official involved. The act of contacting a witness initiated by a representative of the appellant has lead me to disregard this information.

The burden of establishing that the delegate of the Director erred in the Determination rests with Tiger. I must now consider, on the balance of probabilities, what is more likely to have transpired between Tiger and Grewal.

A number of inconsistencies arose with respect to the evidence provided by Tiger:

- Tiger maintains that Grewal did not work beyond June 4, nevertheless full wages were paid to Grewal up till June 12;
- Tiger maintains cash advances were provided to Grewal on an as requested basis but no longer has the records to substantiate this assertion;
- Tiger maintains that the hourly rate was \$10.00 / hour yet no pay statement was issued until **after** Grewal's employment ended **and** this pay statement does not indicate the hourly rate as required by the *Act*;
- Tiger maintains that daily records of Grewal's hours were kept but no longer has the records to substantiate this assertion;
- the ROE issued by Tiger was issued almost 2 months after Tiger alleges that Grewal last worked;
- Tirth Kular claimed to have no interest in the operations of Tiger, yet she initiated contact with the MOF in Burns Lake with regard to this matter.

On the balance of probabilities, I prefer the evidence provided by Grewal. I find that Tiger has failed to establish that the delegate of the Director erred in the Determination.

For all of the above reasons, I conclude that Grewal is owed wages as calculated by the delegate of the Director and set forth in the Determination dated May 14, 1997.

The appeal by Tiger is therefore dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 14, 1997 be confirmed in the amount of \$2,168.62

**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**