

An appeal

- by -

Dharampal Gill
("Gill")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2001/176

DATE OF HEARING: August 1, 2001

DATE OF DECISION: August 8, 2001



DECISION

APPEARANCES:

Dharampal Singh Gill	on his own behalf
Michael S. Menkes, Barrister & Solicitor	for Mehar Forest Products Ltd.
No appearance	for the Director of Employment Standards

OVERVIEW

On January 2nd, 2001 I issued reasons for decision (see B.C.E.S.T. Decision No. D544/00) in an appeal filed by Dharampal Singh Gill (“Gill”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 18th, 2000 (the “Determination”).

The Director’s delegate determined that Mehar Forest Products Ltd. (“Mehar”) owed Gill, its former employee, the sum of \$3,719.45 on account of unpaid wages including overtime pay (the largest component of Gill’s award), statutory holiday pay, one week’s wages as compensation for length of service, vacation pay and interest. In awarding Gill only one week’s wages as compensation for length of service, the delegate specifically rejected Gill’s assertion that his length of service should be calculated as and from September 2nd, 1997. Rather, the delegate accepted Mehar’s position that Gill’s service with Mehar commenced on April 16th, 1999 and thus Mehar was not liable to Gill for any unpaid wages that were earned or payable prior to April 16th, 1999.

In his appeal, Gill asserted that the delegate did not correctly interpret or apply sections 95 (associated corporations) and 97 (sale of business or assets) of the *Act*. I concluded that the delegate did not err in refusing to make a section 95 declaration with respect to Gill’s former employer, Pacific Lumber Remanufacturing Inc. (“Pacific Lumber”) and Mehar. Accordingly, I confirmed the Determination insofar as it concerned section 95.

With respect to the section 97, however, I held that the delegate erred in concluding that Mehar was not a “successor” to Pacific Lumber as defined by section 97 of the *Act* and, accordingly, I made the following order:

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be varied such that Gill’s employment with Mehar is determined, in accordance with section 97 of the *Act*, to have been continuous and uninterrupted as and from September 2nd, 1997. Accordingly, this matter is hereby referred back to the Director solely for



the purpose of calculating Gill's entitlement in accordance with the findings and directions set out herein.

THE PRESENT APPLICATION

Following his further investigation, the Director's delegate issued a report, in the form of a letter with attached calculation schedule and other supporting documents, dated February 15th, 2001 and addressed to the Tribunal's Vice-Chair and Registrar.

As noted in his February 15th report, the only daily time records available to the delegate were those of Mr. Gill. However, Mr. Menkes, counsel for Mehar, conceded before me that so far as he and his client could gather, Mr. Gill's time records appeared to be accurate.

The delegate's revised calculations indicate that Mehar is liable to Gill for the total sum of \$24,795.72. This latter figure is comprised of \$24,088.52 on account of overtime pay, vacation pay and statutory holiday pay and \$707.20 on account of two weeks' wages as compensation for length of service.

The delegate's revised calculations do not appear to include a separate component for section 88 interest. In addition, the calculations include wages payable as and from October 1st, 1997 when, by reason of section 80 of the *Act*, the calculations should date from October 6th, 1997. This latter calculation error has comparatively little impact on the overall figure but nonetheless Mr. Gill's unpaid wage entitlement must be adjusted accordingly.

More problematic, however, is the wage rate used to calculate Gill's entitlement, namely, \$8.50 per hour. Mr. Menkes, for Mehar, submitted (based on his review of the available records) that Mr. Gill's hourly wage rate was \$8 per hour up until the end of February 1999. Mr. Gill appears to have been paid at an hourly rate of \$8.50 only as and from March 1st, 1999. Mr. Gill, when queried about the matter, acknowledged that he was initially hired by Pacific Lumber at a rate of \$8.00 per hour and that this rate increased by 50 cents per hour. Mr. Gill could not recall when his hourly rate increase took effect but he conceded that the increase may well have taken effect on or about March 1st, 1999.

I directed the Tribunal's settlement officer to recalculate Gill's unpaid wage entitlement taking into account the above adjustments. I have reviewed the settlement officer's calculations and find them to be completely in order. Thus, Gill is entitled to \$20,640.06 on account of overtime pay, vacation pay and statutory holiday pay and a further \$707.20 on account of 2 weeks' wages as compensation for length of service and concomitant vacation pay.

**ORDER**

Pursuant to section 115 of the *Act*, and further to my reasons issued on January 2nd, 2001, I order that the Determination be varied to indicate that Mehar Forest Products Ltd. is order to pay Dharampal Singh Gill the sum of \$21,347.26 together with interest to be calculated by the Director in accordance with the provisions of section 88 of the *Act* as and from October 6th, 1997.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal