

**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-

Price's Alarm Systems Ltd.

(“Price's Alarm” or the “appellant”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 1999/358

**DATE OF HEARING:** September 23rd, 1999

**DATE OF DECISION:** October 25th, 1999

## DECISION

### APPEARANCES

Robert Price                               for Price's Alarm Systems Ltd.

Melissa Scurfield                       on her own behalf

Gerry Omstead, I.R.O. for the Director of Employment Standards

### OVERVIEW

This is an appeal brought by Price's Alarm Systems Ltd. ("Price's Alarm" or the "appellant") pursuant to section 112 of the *Employment Standards Act* (the "Act") from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on May 13th, 1999 under file number 033467 (the "Determination").

The Director's delegate determined that Price's Alarm owed its former employee, Melissa Scurfield ("Scurfield"), the sum of \$1,586.21 on account of unpaid wages (including 1 week's wages as compensation for length of service) and interest.

The appeal was heard at Victoria on September 23rd, 1999 at which time I received the testimony of Mr. Robert Price (an officer and director of the appellant), on behalf of Price's Alarm and from Ms. Scurfield on her own behalf. Mr. Gerry Omstead made submissions on behalf of the Director.

### ISSUES TO BE DECIDED

The appellant does not deny that Ms. Scurfield is entitled to some award; rather, the basis of the appeal is that the Director erred in calculating her entitlement, particularly in regard to the wages awarded for Ms. Scurfield's period of training and for compensation for length of service.

I shall address each issue in turn.

### FACTS AND ANALYSIS

#### *Wages for Training*

Ms. Scurfield was awarded \$280 based on 40 hours of training (during the period February 9th to 15th, 1998) compensated at the then-minimum hourly wage of \$7. This training occurred after Ms. Scurfield was hired in early February 1999. Although each of the actual on-site training sessions

lasted less than 8 hours--usually about 6 1/2 hours--a certain number of "afterhours" were also spent preparing homework assignments and studying or preparing for tests and presentations.

I am satisfied, based on the uncontradicted evidence of Ms. Scurfield (the company official who conducted the training did not appear before me) and having reviewed the "training agenda" provided to all trainees (which corroborates Ms. Scurfield's evidence as to assignments and tests), that there is no reason to disturb the Determination insofar as the award for "training wages" is concerned.

The employer acknowledges that it did not pay Ms. Scurfield for her training hours. Given that a person is, by statutory definition, deemed to be an "employee" while being trained by the employer, those training hours must be compensated based on the greater of the agreed wage rate or the minimum wage. In this case, there was no agreement as to any "training wage" and thus Ms. Scurfield was entitled to be compensated for all training hours at the minimum wage. I find that Ms. Scurfield has a claim for at least 40 hours of compensable training time.

*Compensation for length of service*

As noted above, the delegate awarded Ms. Scurfield 1 week's wages as compensation for length of service. Price's Alarm, quite properly in my view, does not submit that it had just cause to terminate Ms. Scurfield. Scurfield's employment commenced in early February 1998; she was terminated, without prior written notice, in mid-June of the same year. Having completed 3 consecutive months of employment, Scurfield was entitled to 1 week's wages as compensation for length of service [see section 63(1) of the *Act*].

The real problem here is in determining her weekly wage since she was paid a base salary plus commission. At the point of her termination, her remuneration was \$500 per month plus commissions. Section 63(4) of the *Act* sets out how a terminated employee's weekly wage is to be calculated; the calculation is based on the employee's average weekly wage during the 8-week period prior to termination. Pursuant to section 1, "wages" includes monies *paid* as well as monies *payable* during the 8-week period prior to termination.

I accept that Scurfield was terminated in mid-June, 1998. As a commissioned sales representative, her commissions were earned when a sale was effected but pursuant to her agreement with Price's Alarm, such commissions were not paid until 2 to 3 weeks after the subject matter of the sale (typically some sort of security system) was installed. The systems were usually, but not always, installed within 2 to 3 weeks after being invoiced.

Unfortunately, the employer's records--at least the records before me--do not allow for an exact calculation of Scurfield's entitlement. During the 8-week period from approximately mid-April to mid-June 1998, Scurfield, according to the employer's own records, earned about \$6,200 in commissions (I've attributed one-half of April's total commissions in this calculation) that would have been paid or payable during the relevant 8-week period for a weekly average of \$775. In addition, Scurfield received about \$125 per week as a base salary. Accordingly, and recognizing that this is not an exact calculation but the best I can do with the available evidence and still be

true to the *Act*, Scurfield ought to have been paid \$900 as 1 week's wages plus 4% concomitant vacation pay.

The employer says that \$250 of the \$500 base salary paid for June 1998 ought to be characterized as "severance pay" but in the absence of clear and unequivocal evidence that this latter sum was paid as severance pay, I cannot accede to the employer's submission. The evidence before me on this point is equally consistent with the salary being due and payable on the 1st of the month in which case Scurfield, on June 1st, was entitled to be paid \$500; none of this money can be attributed to severance pay since she was not terminated until June 15th.

**ORDER**

In light of the foregoing findings, I would award Scurfield the following amounts:

Training Wages:	\$280.00
Compensation for length of service:	\$900.00
Vacation pay on the above:	\$ 47.20
Vacation pay owed on wages paid (4% of 10,203.27)	\$408.13
Less vacation pay actually paid	<u>(264.12)</u>
Subtotal:	<u>\$1,371.21</u>

plus interest to be calculated in accordance with section 88 of the *Act*.

Pursuant to section 115 of the *Act*, I order that the Determination be varied and that an amended Determination be issued as against Price's Alarm in the amount of **\$1,371.21** together with interest to be calculated by the Director in accordance with section 88 of the *Act*.

**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**