

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 -

C-O-E Posscan Systems Inc.
("Posscan")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: James Wolfgang

FILE NO.: 1999/447

DATE OF HEARING: September 24, 1999

DATE OF DECISION: October 13, 1999

DECISION

APPEARANCES

Blaine Rowlett	C-O-E Posscan
Ray Lee	C-O-E Posscan
Doug Stevens	for himself
Dennis Law	for Stevens

OVERVIEW

This is an appeal by C-O-E Posscan Systems Inc. (Posscan) pursuant to Section 112 of the *Employment Standards Act (the "Act")* from a Determination dated June 24, 1999.

The Determination found Posscan had violated Part 3, Sections 18 and 21 and Part 4, Section 40 and Part 7, Section 58 of the *Employment Standards Act* and ordered them to pay Douglas L. Stevens (Stevens) \$2,311.93 for regular wages, overtime wages and annual vacation pay.

A previous Determination dated October 27, 1998 had resolved several issues however a number of others remained unresolved which gave rise to this Determination.

In a letter dated July 15, 1999 addressed to the *Employment Standards Tribunal*, Posscan agreed with the Determination's findings on regular wages and vacation pay. This leaves us with a single issue, overtime.

The Determination found Posscan owed Doug Stevens (Stevens) \$2,311.93 for regular wages, vacation pay on BC MSP premiums, overtime and vacation pay plus interest. A penalty of \$0.00 was also imposed.

Posscan agreed they owe wages and vacation pay for August 24, 1998 in the amount of \$177.63, vacation pay on BC MSP payments of \$17.92 for a total of \$195.55. They do not agree they owe any additional wages.

A hearing was held and I took evidence from the parties.

ISSUE TO BE DECIDED

Does Posscan owe any additional wages to Stevens?

FACTS

Possican employed Stevens as a “Field Engineer” from Oct 13, 1997 to August 24, 1998. His rate of pay was \$3,700 per month. He terminated his employment August 24, 1998. He was one of 6 people who worked in the Video Department doing installation and service work on various types of video security systems, primarily in retail outlets. Most of his work involved travel away from his home and, as a result, there was a considerable amount of overtime worked.

Stevens worked under the direction of Dennis Law, the Video Department Manager. When Stevens started work he was interviewed by David Paul, General Manager who informed him “he did not want to hear about overtime”. Stevens took this to mean if overtime was to be worked it was to be taken off rather than paid out. This was particularly true in the case of installations.

Possican indicated overtime hours must be submitted on company time sheets no later than the 25th of the month in which they were earned. The time sheets must be verified by the department manager and must indicate if the employee wishes to be paid for this time or have it banked.

Possican indicated they had no difficulty with time sheets or overtime claims from the other employees in the video department.

In April of 1998 Stevens became aware he had accumulated a large amount of banked time that he felt he was not going to be able to liquidate and applied to have 78.625 hours overtime paid out from a total bank of 113.75 hours at time and one half. Stevens was not entitled to vacation pay as he had not worked for the company for a year. He left 35.125 hours of banked time to be used for a holiday he had planned.

Possican became upset at the size of this payout, \$2,517.97, as they had no records of the number of hours Stevens had in his overtime bank. As a result of this claim a meeting was held with Stevens and attended by Dennis Law, Department Manager, Jennifer Mayer, Office Manager and Holly Lenk. Stevens was informed of the proper procedure for handling overtime. They instructed Stevens to follow the company policy, which was to file time sheets on a regular basis. Stevens claims he was unaware Possican did not have a record of his overtime bank as he claims he filed his time worked with his Department Manager. Stevens was not aware the hours he was reporting were not being forwarded to the payroll department. He did not receive any statements of overtime credits from the payroll department as they claim to send out with the pay cheques.

Stevens was not concerned about the state of the overtime credits as he expected to take that in time off. He admits he was not following the policy of overtime reporting as “it was going into an overtime bank so it was no big deal”.

From that time until his resignation Posscan claim they did not receive proper time sheets from Stevens.

After filing his complaint, Stevens attempted to recalculate his overtime into time and one half and double time based on the daily hours worked after April 11, 1998. Prior to that time all calculation of overtime had been done on a time and one half basis. The Determination did not accept Stevens calculation of those amounts and, in the absence of complete daily time records from Posscan, was unable to rely on them.

There were no accurate daily time records supplied by Posscan. The Determination relied on the record of overtime supplied by Stevens. Stevens kept a daily diary in which he maintained a record of the hours worked including overtime

Stevens claims to have filed time sheets for May and June. He was on vacation in July and, in fact, had a negative balance in his overtime bank. He did not file any time sheets for August.

On August 24, 1998 Stevens sent a fax to Posscan advising he was resigning immediately and requesting his wages etc. be deposited in his bank account.

The office manager and the entire video department, including the department manager, resigned. The former department manager had started another company in competition with Posscan and has hired all the former video department employees. Posscan filed for bankruptcy on May 23, 1999. A court action is pending between Posscan and the former employees.

ANALYSIS

The type of work being done by Stevens contemplates a certain amount of overtime and that would be expected to be included in the pricing of the work. For the company to track their costs, it is important to have current overtime data submitted. Stevens showed a disregard for that by not reporting his time worked regularly. Stevens claimed to have filed time sheets for May and June however the payroll department has no record of receiving them. The department manager cannot recall what was done with Stevens' time sheets, however he believes they were forwarded to the payroll department.

One question that has not been answered is why only Stevens seemed to have had difficulty with reporting his time? We have no evidence of any other employee in that department having problems.

The lack of follow-up by the company also poses a problem. They had a meeting with Stevens in April instructing him to follow the company policy in reporting time and filing time sheets. For the next three months they do not receive time sheets from Stevens. The *Act* requires an employer to keep payroll records. When they had not received his payroll records Posscan had a responsibility to follow up on the reason for the failure to submit time sheets.

The Determination found at page 8:

Briefly, the basis of COE's contest was that Stevens had not submitted his time sheets within the time frames set by COE. While that may have formed a foundation for COE to discipline Stevens, it did not, of itself, justify denying him payment for hours, which he was able to substantiate as having been worked by him. From the information supplied by both Stevens and COE, it seemed that an individual (or individuals) in a position (s) of authority at COE, knew that Stevens was working some overtime hours in the period. That those individuals did not press Stevens for more complete information, concerning his hours worked, seems more of a lapse for which COE is culpable, under the Act, than a lapse for which Stevens must bear responsibility.

Posscan had a particular problem with their management structure as, at some point prior to August 21, 1998, the office manager and the department manager had decided to leave Posscan and work for a competitor started by the department manager. These were the probable reporting lines Posscan would rely on for enforcement of their policy. During this time I believe the managers may not have been as diligent about enforcing policy as they might have been and their credibility may be in some question.

The issue comes down to one point. Did Stevens work the hours claimed? If he did, then he is entitled to be paid for such hours. The Determination, with some minor adjustments, found that Stevens had worked the hours identified and ordered Posscan to pay an amount \$1,992.81 for overtime and additional vacation pay. Interest in the amount of \$123.57 from August 25, 1998 to June 24, 1999 is also payable.

While I believe Posscan was operating with the best of intentions, it was their responsibility to ensure the requirements of the *Act* are followed.

I find the Determination in respect to overtime in the amount of \$208.16; additional vacation pay in the amount of \$1,784.65 and interest of \$123.57 is confirmed. Posscan had agreed to pay the \$177.63 for wages and vacation pay for August 24, 1998 and vacation pay on BC MSP payments in the amount of \$17.92. If this has not been paid it is added to the Determination.

ORDER

In accordance with Section 115 of the *Act* I confirm the Determination dated June 24, 1999 except as amended. Additional interest is to be calculated in accordance with Section 88 of the *Act*.

James Wolfgang
Adjudicator
Employment Standards Tribunal