

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 -

Charles Hajek
("Hajek")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE N_{O.}: 98/521

DATE OF **D**ECISION: September 25, 1998

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Charles Hajek (“Hajek”) of a Determination which was issued on July 17, 1998 by a delegate of the Director of Employment Standards (the “Director”). In that Determination the Director dismissed an overtime claim by Hajek on the basis that he was excluded from the overtime provisions of the *Act* by application of subsection 34(1)(I) of the Employment Standards Regulation (“regulation”), which says:

34 (1) *Part 4 of the Act does not apply to any of the following:*

...

(I) *a person employed on a towboat, other than*

(I) *a boom boat*

(ii) *a dozer boat, and*

(iii) *a camp tender*

in connection with a commercial logging operation;

The Director found Hajek was employed on a towboat. Hajek disagrees with the conclusion for two reasons: first, he argues that the Director failed to recognize that the towboat he worked on also functioned as a “camp tender” for a substantial amount of time; and second, that persons employed on towboats should not, in any event, be excluded from application of Part 4 of the *Act*.

ISSUE TO BE DECIDED

The issue is whether Hajek has shown the Director was wrong to conclude that Hajek was employed on a towboat and therefore excluded from application of Part 4 of the *Act*.

FACTS

Hajek was employed by Clearwater Tug Ltd. to operate a tugboat which was used to tow logs and barges carrying heavy equipment, supplies and provisions in connection with a commercial logging operation on Quesnel Lake.

The Director made the following findings of fact concerning the vessel on which Hajek was employed:

... according to the Marine Safety Regulations, “tow-boat” means a ship used exclusively in towing another ship or floating object astern or alongside or in pushing another ship or floating object ahead. This appears to describe exactly what you were doing, whether you call it towing or barging.

ANALYSIS

As well as concluding Hajek was employed on a towboat, the Director also concluded he was not employed on a boom boat, a dozer boat or a camp tender. The Determination sets out the Director's view of what each of those terms were intended to describe:

Boom boats and dozer boats are used to gather and prepare logs so that they may be hauled by the larger boats to a destination where they can be picked up and taken to a mill. According to Marine Safety, the Marine Crewing Regulations under the Canada Shipping Act define the operations of boom boats and dozer boats as: (a) the ship is engaged in a log sorting or yarding operation that is carried out at a booming ground and does not use lines or chains. Also according to Marine Safety, a camp tender is any vessel used exclusively for carrying supplies to a camp.

. . . it should be noted that our Branch takes the position that a camp tender is a water taxi.

Hajek has not presented any reason for finding the Director's interpretation of those terms is wrong. Nor has he shown there is any reason, factual or legal, for finding the Director was wrong to conclude he was employed on a towboat in connection with a commercial logging operation.

I also do not agree that the exclusion of persons employed on a towboat in connection with a commercial logging operation is an oversight by the legislature based on an incorrect assumption that all shipping, including towboats associated with commercial logging, is federally regulated. First, such a conclusion would be inconsistent with the application of the rest of the *Act* to the employment of such persons. Second, there are a number of other persons whose employment is excluded from all or certain sections of Part 4 of the *Act*, including interior logging truck drivers who, like Hajek, are employed to transport logs in connection with commercial logging operations.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated July 17, 1998 be confirmed.

David Stevenson
Adjudicator
Employment Standards Tribunal