

**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 -

TDB Forestry Services Ltd.  
( "TDB" )

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2000/604

**DATE OF DECISION:** October 30, 2000

## DECISION

### OVERVIEW

This decision is being issued to complete an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by TDB Forestry Services Ltd. (“TDB”) of a Determination which was issued on February 23, 2000 by a delegate of the Director of Employment Standards (the “Director”). The appeal considered the conclusion made in the Determination that TDB had contravened the Act in respect of the employment of Jeffrey Murdoch (“Murdoch”) and was required to pay an amount of \$15,005.95 to Murdoch in respect of that contravention.

In *Re TDB Forestry Services Ltd.*, BC EST #D288/00, I confirmed that TDB had contravened the Act, but ordered the Determination be referred back to the Director to address two matters relating to the calculation of the amount owing to Murdoch as a result of the contravention:

1. Whether the overtime payments made to Murdoch by TDB in 1996 were taken into account when determining the wages owing and, if not, was there a reason for not doing so; and
2. Whether there was an error made in determining there was overtime owed for 12 days on which Murdoch performed no work.

The Director has completed that task and has issued a decision (the “remedial decision”) under Section 79 of the Act dated August 28, 2000, ordering TDB to pay an amount of \$7,113.77. The remedial decision has been referred to me for consideration.

### ARGUMENT AND ANALYSIS

In respect of the first matter considered by the Director, at issue were five payments made to Murdoch in 1996 and identified by TDB as payouts of banked overtime. In 1996, TDB paid a total of \$5,791.49 to Murdoch which were recorded as “overtime”. TDB submitted that these amounts were for overtime hours worked during the period covered by the complaint and should have been included in the calculation done by the investigating officer as wages paid to Murdoch in 1996. The complaint filed by Murdoch encompassed a period from November, 1995 to November, 1997. Murdoch took the position that the amounts paid were for overtime hours worked prior to the period covered by the complaint and were properly excluded from the final calculation of the amount owing in the Determination.

On this matter, the Director confirmed that the material on file indicated the overtime payouts made in 1996 were not taken into account by the investigating officer when determining the amount owing, but that it contained no reason for not doing so. Next, the Director indicated that Murdoch was unable to provide any documentary support for his position, while the material

provided by TDB at least supported a conclusion that four of the five overtime payouts made to Murdoch in 1996 were for overtime worked in 1996. What remained unclear was whether the overtime payout Murdoch received on February 9, 1996 was for overtime hours worked before or after the beginning of the period covered by the complaint. The Director concluded, on balance, there was not sufficient evidence to support a conclusion that the overtime, or any part of it, had been worked prior to the period covered by the complaint and, exercising discretion under paragraph 76(2)(d) of the *Act*, decided all the payments made to Murdoch in 1996 for overtime worked should have been included in the wage calculation. As a result, the overtime calculation was adjusted by deducting the amount paid to Murdoch in 1996, \$5,791.49, from the amount found owing in the Determination.

On the second matter, there was no dispute that Murdoch did not work during the periods May 26 - 30, 1997, August 25 - 29, 1997 and on November 7 and 10, 1997 but was credited with 3 hours overtime worked on each of those days. The Director concluded that was an error and the overtime calculation was adjusted by deducting a further amount of \$891.00 from the amount found owing in the Determination.

In result, the Director has varied the Determination to show the amount owing to be \$7,113.77.

**ORDER**

The remedial decision is accepted and, pursuant to Section 115, the Determination dated February 23, 2000 is varied to order TDB to pay an amount of \$7,113.77, together with whatever interest that has accrued on that amount pursuant to Section 88 of the *Act*.

***David B. Stevenson***

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**