

An appeal

- by -

Merlin W. Thompson  
(“Thompson”)

- 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:** David B. Stevenson

**FILE No.:** 2001/507

**DATE OF HEARING:** June 20, 2001

**DATE OF DECISION:** August 31, 2001



## DECISION

### OVERVIEW

This decision completes an appeal brought under Section 112 of the *Employment Standards Act* (the “*Act*”) by Merlin W. Thompson (“Thompson”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on December 4, 2000. Thompson had complained that his former employer, Lorne W. Camozzi Co. Ltd. (“Camozzi”), had contravened the hours of work and overtime provisions of the *Act* and the annual vacation and statutory holiday provisions of the *Skills Development and Fair Wage Act* (“*SDFWA*”).

The Determination had concluded that Camozzi had not contravened the *Act* or the *SDFWA*, ceased investigating the complaint and closed the file.

Thompson appealed the Determination. A hearing on the appeal was held on March 26, 2001 and a decision was issued on April 18, 2001, BC EST #D177/01. That decision substantially dismissed all of the matters raised in the appeal, except for one matter which was identified in the following statement:

It may be that on those occasions when Thompson was the only first aid attendant on site, he would, for the purposes of the *Act*, be considered working and entitled to wages during those hours he has claimed entitlement (see *Re Knutson First Aid Services Ltd.*, BC EST #RD095/01 (Reconsideration of BC EST #D300/00)).

The matter was referred back to the Director to allow for consideration of the question raised in the above statement. The Director has reviewed the matter and has filed a supplementary Report to the Tribunal, dated July 4, 2001. The Report concluded that Thompson is owed an amount of \$1,157.69. Several submissions on the matter were attached to the Report. These submissions have been reviewed. Several submissions subsequent to the issuance of the Report have also been received and considered.

### ISSUE

The issue in this decision is whether Thompson was correctly compensated for those days during which he was the only first aid attendant on site.



## THE FACTS

The facts are more completely outlined in BC EST #D177/01. For the purpose of addressing the issue raised in this appeal, the following factual conclusions from that decision are relevant:

1. Thompson worked for Camozzi on a road building project at Union Inlet from July 19, 1999 to September 11, 1999 as a cook and first aid attendant at the rate of \$20.90 per hour plus \$4.00 per hour benefits.
2. Until July 30, 1999, Thompson was the sole first aid attendant on site. The other first aid attendant on site was Dave Gibson.
3. Thompson was paid for 10 hours a day.
4. At the hearing, it was the position of Camozzi that Thompson worked from 5:30 am to 9:30 am and from 3:30 pm to 7:30 pm as a cook. He was paid for 10 hours a day.

As well, the Report made several additional findings of fact relevant to the issue being considered in this decision:

1. Thompson was the only first aid attendant on site from July 14, 1999 to, and including, July 29, 1999.
2. Thompson had submitted that he arranged first aid services during the shifts when road construction work was being carried out.
3. Thompson was on-call as a first aid attendant during the working shifts, but was not on call once the work shift was finished for the day.
4. Thompson was owed wages for those hours between 5:30 am and 7:30 pm that he was not otherwise paid for on those days when he was the only first aid attendant.

The parties have commented on the Report. Camozzi has submitted that the Report contains several errors:

1. On the 24<sup>th</sup> of July, the employees worked only eight hours, not ten hours as suggested in the Report.
2. July 25<sup>th</sup> was a Sunday and no employees except Thompson worked.
3. On July 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup> heavy rains limited the amount of work that was done to less than ten hours.
4. Dave Gibson arrived on July 29<sup>th</sup>.



Thompson continues to assert that he generally worked more than 10 hours a day. He also asserts that he worked every day during the six hour period from 9:30 am to 3:30 pm.

The Director filed a submission on August 15, 2001 revising the amount Thompson is owed to \$1,061.23 based on the information provided by Camozzi in their submission following issuance of the Report.

## **ARGUMENT AND ANALYSIS**

This decision is not about whether Thompson's continued assertions about the agreement he made with Camozzi to work fifteen hours a day, the number of hours he claims to have worked or the veracity of statements made by representatives of Camozzi. This decision is only about whether the Determination correctly recognized Thompson's claim for hours worked when he was the sole first aid attendant on site.

Decision BC EST #D177/01 dismissed a substantial part of Thompson's appeal, which was founded upon his assertion that he had worked 15 ½ hours a day every day he was employed on the project. The reasons for dismissing the appeal are found in that decision. Neither the decision of the Tribunal, nor the Determination upon which this appeal is based, concluded that Thompson worked from 5:30 am to 9:30 am and from 3:30 pm to 7:30 pm each day as a cook, only that it was probable he worked no more than the 10 hours for which he was paid. The Determination stated:

... As well I take into account that the complainant had other duties such as being one of the first aid attendants. I believe the complainant worked hard. But after examining the available information, I have to find that on the balance of probabilities a 10-hour workday in this camp is consistent with the complainant's expected duties . . .

The decision recognized that comment. The Report has now also recognized that there was an "on-call" aspect to Thompson's responsibilities when he was the only first aid attendant on the project that justified a conclusion he was entitled to be paid wages for the period he was "on-call". The Report found that Thompson was "on-call" when work was being done. The Report, in result, recognized that Thompson was either at work or on-call, and deemed to be working (see subsection 1(2), definition of "work"), for 14 hours a day while he was the only first aid attendant on site and there were shifts being worked. The Report concludes that the length of the shifts on any particular day during the period Thompson was the only first aid attendant on the project did not obviate or diminish the "on-call" character of his responsibilities on those days. I agree. Once work started on a shift Thompson was "on-call" and there is no evidence to suggest or indicate he did not continue to be "on-call" for the duration of his work day.



None of the arguments of either Thompson or Camozzi have affected the reasonableness of the conclusion reached by the Director in the Report. The Report justifies a variance to the Determination.

### **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated December 24, 2000 be varied to show a contravention of the *Act* and an amount owing to Thompson in respect of that contravention of \$1,061.23, together with any interest that has accrued under Section 88 of the *Act*.

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