

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 -

Jo Bates
("Bates")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE No.: 2000/593

DATE OF DECISION: October 25, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the "Act") by Jo Bates ("Bates") from a Determination issued by a delegate of the Director of Employment Standards (the "delegate") on August 4, 2000. The delegate found that Emotive Solutions Inc. ("Emotive") owed \$81,505.97 in wages to forty-seven former employees. Bates, along with ten other former employees, appealed the Determination on the basis that they were owed more wages than the amount calculated by the delegate.

ISSUE TO BE DECIDED

Is Bates entitled to more wages than the amount set out in the Determination?

FACTS AND ANALYSIS

In the Determination, the delegate said:

Emotive Solutions Inc. is a high tech company which operates an on-line bingo game.

...

The employer states that they are strapped for cash at this time. They are looking for new investors and can not meet the payroll. Accordingly, the employer has laid all staff off without written notice as of July 28, 2000. The employer has provided records indicating the amounts of regular pay and annual vacation pay owing to each employee.

The delegate determined that Emotive owed a total of \$81,505.97 in wages to forty-seven former employees, including Bates. She found that Bates was owed regular wages and vacation pay in the amount of \$586.20. Her calculations for Bates were based on a start date of April 27, 2000 and an end date of July 16, 2000.

Bates appealed the Determination on August 25, 2000. She said she is owed \$796.08, excluding statutory holiday pay. She said she worked until July 24, 2000 and is owed 55 hours of pay, wages for working the July 1, 2000 statutory holiday, and vacation pay. She enclosed a copy of her hours of work from July 5, 2000 to July 24, 2000.

Emotive and the delegate were invited to reply to Bates' appeal. No reply was received from Emotive. The delegate forwarded a submission to the Tribunal dated August 31, 2000. In her submission, the delegate said:

...The Delegate is supportive of the Determination being varied as per the attached calculations.

It appears that some of the employees were in receipt of NSF cheques and or worked past the last pay period for which the employer forwarded records. The employee's records all appear credible and should be accepted.

...

...The evidence presented by ...Bates is new evidence that appears to be creditable (sic). Accordingly, the Delegate would support the Tribunal in varying the Determination as follows:

...

Varied amount:

July 05 - July 24, 2000 55 hours @\$12.00 per hour = \$660.00
Statutory holiday pay (July 1) paid regular wages not premium plus another day off with pay = 5.5 hrs x (.5 of \$12.00) \$6.00 = \$33.00
Day off with pay 5.5 hours x \$12.00 = \$66.00
Vacation pay (\$3027.00 x .06%) = \$181. 62

For a grand total owing of \$940.62

The Delegate has discussed this with the appellant, who is in agreement with the varied amount. The Delegate has tried but has not been able to contact the employer.

The delegate's submission was forwarded to Emotive and Bates for their reply. Neither replied to the delegate's submission.

The burden is on the appellant, Bates, to show that the Determination should be varied or cancelled. In this case, I am satisfied that Bates has met the burden to show the Determination should be varied.

Bates claims that she is owed more wages than the amount calculated by the delegate in the Determination. She provided information to support her position. Emotive and the delegate were invited to reply to the appeal. Only the delegate replied and she made no argument that the Tribunal should refuse to consider the information provided by Bates. Rather, the delegate accepted Bates' information as credible, and as a result, she revised her calculations. The delegate said that Bates agreed with her revised calculations and she was unable to contact Emotive about its position. The Tribunal forwarded the delegate's revised calculations to Bates and Emotive for their reply. Neither made a submission to the Tribunal challenging the accuracy of the amounts. Accordingly, I can find no basis to reject the delegate's conclusion that Bates is owed \$940.62 and the Determination should be varied to reflect that amount.

I have issued concurrent Decisions (BCEST #D454 to #D459 and #D461 to #D464) with respect to the other ten former employees of Emotive who have filed appeals of the Determination. As

in this case, I have concluded that the delegate's new calculations should be accepted. As a result the total amount of the Determination is varied to \$89, 558.03.

ORDER

Pursuant to Section 115 of the Act, I order that the Determination dated August 4, 2000 be varied to show that Bates is owed \$940.62 and further that it be varied to show the total amount owed by Emotive is \$89,558.03, together with whatever additional interest that may have accrued, pursuant to Section 88 of the Act, since the date of issuance.

Norma Edelman

Norma Edelman
Vice-Chair
Employment Standards Tribunal