

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 -

John Thomas Southwell
("Southwell")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ian Lawson

FILE NO.: 99/415

DATE OF HEARING: September 24, 1999

DATE OF DECISION: November 17, 1999

DECISION

APPEARANCES

For the Appellant:	no appearance
The Respondent:	no appearance
For the Director of Employment Standards:	no appearance

OVERVIEW

This is an appeal by John Thomas Southwell ("Southwell") pursuant to s. 112 of the *Employment Standards Act* ("the Act"). The appeal is from a Determination issued by Kevin Molnar as a delegate of the Director of Employment Standards on June 10, 1999. The Determination required Ridley Island Sawmills Ltd. ("Ridley Sawmills") to pay wages, overtime pay, holiday pay and vacation pay in the amount of \$3,147.24 to Southwell. Southwell filed an appeal on July 2, 1999. An oral hearing was scheduled to be held at Prince Rupert, B.C. on September 24, 1999, but there were no appearances by any of the parties.

FACTS

Southwell was employed by Ridley Sawmills as a caretaker at its mill site on Ridley Island, just outside Prince Rupert, B.C. Southwell worked for Ridley Sawmills between April 28 and December 31, 1997. He alleges that he was to be paid \$80.00 per day to work between 7:00 PM and 7:00 AM, for 7 days each week. His duties were to act as a security guard, make regular patrols of the mill site, and report any unusual occurrences. Southwell's original complaint with the Director alleged that he was also asked to perform clean-up duties around the mill equipment between April 28 and May 12, 1997, in which time he says he worked a total of 53 hours. Southwell also complains that on May 28, 1997 his daily wage was unilaterally reduced to \$60.00; he quit this employment after his wage was again unilaterally reduced to \$40.00 per day in December, 1997. Southwell says he was also asked to act as security guard on a 24-hour basis between May 24 and June 6, 1997, at a time when there appeared to have been a risk of fire to wood chips at the mill site.

The Determination noted that Ridley Sawmills failed to comply with a demand for records issued to it, and provided only some documents relating to Southwell's employment. Ridley Sawmills apparently had no documentation relating to Southwell's hours of work. Ridley Sawmills claimed that Southwell's wage was \$60.00 per day, which is controverted by pay stubs produced to the Director by Southwell indicating the \$80.00 rate. Ridley Sawmills alleged it had no expectations that Southwell would work any number of hours each day, whereas Southwell alleges he was directed to work a 12-hour shift every night, and to make rounds of the mill site every hour of the shift. The Determination employed the \$80.00 rate for a short period of time, then the \$60.00 rate and finally the \$40.00 in calculating wages owing to Southwell. The Director's delegate decided that Southwell worked 4 hours each shift, calculated on the basis that

he made 12 rounds of the work site each shift, which took 20 minutes to do. The Determination was silent on the other complaints made by Southwell.

ISSUE TO BE DECIDED

This appeal requires me to decide whether the Determination correctly resolved Southwell's complaint about unpaid wages and the hours he worked each day.

ANALYSIS

Although there were no appearances at this appeal, I proceeded as if the appeal was to be resolved on the basis of the written submissions received. Having examined the initial complaint made by Southwell, it is clear that the Determination failed to inquire into several issues raised by Southwell, which he now raises on appeal: whether he is entitled to wages for the 53 hours he worked doing cleanup at the mill site; whether he is entitled to wages for the days he was required to perform 24-hour duties as security guard; and whether Ridley Sawmills was entitled to unilaterally reduce his daily wage rate from \$80.00 to \$40.00 over the course of his employment. Another issue apparent to me is whether Southwell could claim he was constructively dismissed by being required to perform the same work for half his original pay.

As the Determination fails to address these issues, and there is no doubt on the material before me that Southwell raised these issues in his complaint, I have decided that the entire complaint should be referred back to the Director for a more thorough determination. If the parties had been before me, I would have been most interested in knowing whether Southwell agreed to the wage reductions, and if he did not, whether Ridley Sawmills had any valid argument against my finding that Southwell's wage for the entire period was \$80.00 per day. As to the dispute about Southwell's hours of work, it may well be that as a resident caretaker he is exempt from the Act's minimum standards, but the fact remains that Ridley Sawmills deemed the value of his being on duty for 12 hours every night of the week to be \$80.00 per day. Ridley Sawmills is in breach of the Act's requirement to maintain adequate records of hours worked by its employees; in such circumstances I have difficulty accepting that its unilateral wage reductions should be preferred over Southwell's description of the terms of his employment.

ORDER

After carefully considering the evidence, I find that the Determination made by Mr. Molnar failed to address matters raised in Southwell's initial complaint and so the complaint should be referred back to the Director. Pursuant to s. 115(1)(b) of the *Act*, I order that Southwell's complaint be referred back to the Director for determination.

Ian Lawson
Adjudicator
Employment Standards Tribunal