

An appeal

- by -

Accutemp Refrigeration and Air Conditioning Ltd.

- 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: James Wolfgang

FILE No.: 2002/391

DATE OF DECISION: October 30, 2002

DECISION

OVERVIEW

This is an appeal by Accutemp Refirgeration and Air Conditioning Ltd. (“Accutemp”) pursuant to Section 112 of the *Employment Standards Act (the “Act”)* of a recalculation issued from a referral back to the Director of Employment Standards (the “Director”) by order of Tribunal Decision #D701/01 dated December 31, 2001.

The original Determination, dated January 29, 2001, awarded John Ian Woods (“Woods”) \$10,406.23 for vacation pay, wages, overtime and interest. Woods objected that the amount awarded was not sufficient but did not file an appeal.

Accutemp appealed the Determination. They claimed Woods falsified his time sheets and had received substantially more wages than he was entitled to. Accutemp further claimed they relied on the honesty of their employees thus paid them without question the amounts they submitted on their time sheets. Following the complaint by Woods to the Employment Standards Branch, (“the Branch”) Accutemp performed an in depth review of Woods’ time sheets and attempted to reduce the amount of the Determination.

Woods maintained Accutemp had arbitrarily reduced the hours he reported on his time sheets without consulting with him. He claimed this resulted in a substantial underpayment of wages to him. He further claimed the delegate for the Director did not meet with him to review his time sheets or evidence but relied solely on the employer’s records.

At the conclusion of the hearing held June 27, 2001 eighty-two time sheets remained in dispute. There was a subsequent submission from Accutemp received by the Tribunal July 10, 2001. Woods submitted a response July 19, 2001. A later submission by Woods was rejected by the Tribunal as being out of time. Tribunal decision #D426/01 dated August 14, 2001 referred the matter back to the Director for further investigation. A revised award was issued in the amount of \$4,564.67.

Woods objected to the manner in which the delegate conducted the investigation. He claimed the time sheets were changed by the delegate in the review without any explanation and he was not given an opportunity to explain how they were completed. He further claimed he did not know which time sheets the delegate changed or why and without that information he could not explain the difference between Accutemp’s time sheets and his original time sheets. Woods appealed and the appeal was heard by way of written submissions.

Tribunal Decision #D701/01 dated December 31, 2001 also referred the matter of the time sheets back to the Director with instructions. Those instructions were for the delegate to meet directly with Woods. This was to give Woods an opportunity to present his evidence in person to the delegate. Woods claimed this would substantiate his records and prove the altered time sheets were not an accurate reflection of the time worked by him.

The delegate attempted to contact Woods by telephone without success. The delegate sent a letter to Woods dated February 08, 2002 indicating he had been unable to contact him by telephone. Woods telephoned the delegate advising he was working out of town and would contact him when the project

was completed. After not hearing from him for nearly four months, the delegate again sent a letter dated June 03, 2002 advising Woods to contact him before June 21, 2002 or the file would be returned to the Tribunal. Woods finally took time off work and met with the delegate. As a result of that review, the delegate made some adjustments and a revised calculation was issued in the amount of \$5,724.21.

Accutemp have taken the position they disagree with the outcome of the most recent investigation by the delegate, however they are prepared to accept his report if it will bring closure to the matter.

The delegate, in his submission to the Tribunal dated July 8, 2002; claimed Woods made no specific reference to the recalculation of hours and no dates or hours were questioned. The only reason Woods gave for rejection of the recalculation was that Woods did not see why he should “give the employer 10 or 15 thousand dollars to settle his complaint”. The delegate states the adjustments made to the recalculation of hours revolved around travel time to and from jobs. Woods appealed the revision.

The appeal was heard by way of written submissions. Woods has requested a complete and independent re-investigation of all the records available.

Woods has specifically referred to five time sheets, which he claims were incorrectly addressed by the delegate. He has made this request without supplying additional new evidence.

ISSUE

Should a complete and independent re-investigation be ordered?

Is Woods entitled to additional wages in respect to the five time sheets?

THE FACTS AND ARGUMENT

The five time sheets in dispute are for November 20, 1997, March 12, 1998, May 5, 1998, June 4, 1998 and August 10, 1998.

November 20/97. Woods claims to have worked 9.25 hours this day with a start time of 07:30 am and a finish time of 5:45 pm. Lunch is shown as having been taken off between 12:00 and 1:00. Accutemp reduced his time by ½ hour for an 8:00 am start for a total of 8:75 hours. 8:00 am is the regular start time for the Victoria technicians. The delegate has reduced the total hours to 7.75 hours. There is a non-billable entry showing one hour for a “sales quote”, which appears to have been signed by “George”.

March 12/98. Woods claims to have worked 11.5 hours with a start time of 6:00 am and end time of 7:30 pm. He deducted 1 hour for lunch in the 11:00 am to 3:30 pm period at the Aberdeen Hospital, claiming only 3.5 hours for that period. Accutemp reduced his time from 11.5 to 10.5 hours for a 1 hour lunch he had with other technicians from 12:00-1:00 pm. The delegate has reduced the total hours to 9.5.

May 5/98. Woods claims to have worked 11.5 hours with a start time of 7:30 am and an end time of 8:00 pm when he returned home to Nanaimo. He claims he did not stop for lunch and had dinner with the General Manager of Accutemp from 6:00 to 7:00 pm, which was not claimed as time worked. Woods is claiming 11.5 hours for a 12.5 hour day. Accutemp claim Woods took a

lunch break and the dinner with the General Manager took 1 hour 51 minutes and they deducted 3 hours from Woods for a total of 8.5 hours pay. The delegate awarded Woods 10 hours pay.

June 4/98. Woods claims to have worked 9.5 hours with an 8:00 am start and a 5:30 pm finish. 5.5 hours are shown as “non-billable warranty n/c” for work at Zaicana Realty and claims Gary McLeod, Area Manager, approved them. Woods claims he did not stop for lunch that day.

Accutemp claim there was no work ticket and no confirmation slip so reduced Woods’ hours by 4.5 plus 1 hour for lunch, paying him for 4 hours. The delegate awarded Woods 5.5 hours.

Woods further claims that time sheet also shows the hours worked by him on June 5/98 of 10.5 hours and 4.75 hours on June 6/98. He claims these hours were put on the time sheet by the Area Manager for work he performed at Payless in Mill Bay. Woods claims he has never been paid for the 15.25 hours recorded on that time sheet.

August 10/98. Woods claims he worked 7.5 hours with an 8:00 am start and a 3:30 pm finish. He claims he did not stop for lunch that day. Accutemp reduced his start time to 9:00 am claiming Woods went for parts in the morning. They paid him for 6.5 hours. The delegate awarded Woods 6.5 hours.

Woods has re-submitted copies of letters that were before the Director in the previous investigations. The key ones relate to who supervised the “up-island technicians” when they worked in Victoria and on whose authority did a technician get paid when working on non-billable jobs where no work ticket was prepared?

Woods has explained his version of what happened with each of the five time sheets and how he claims the delegate incorrectly made a determination of the amount to which he is entitled.

Woods submitted a copy of a letter from Steve Smith (“Smith”), the Service Manager in Victoria during the time in dispute, dated June 8, 2001. It states, in part:

Periodically, the up-island technicians would be brought down to Victoria to work. This was done to help alleviate the excessive workload that was in Victoria. In my capacity as Service Manager, I advised the up-island technicians that they could work as many hours as they wanted. They could start and end their days whenever it suited their schedules.

It further states:

During the period that I worked with Ian Woods I found him to be a dedicated and trustworthy employee. Part of my daily task was to review the technician’s time sheets. If a discrepancy was found it would be discussed with the technician and resolved. I was never aware of a discrepancy or problem with Ian’s time sheets during my tenure as Service Manager.

Accutemp claim Smith was not Woods’ supervisor. His supervisor was Gary McLeod, Area Manager and therefore Smith had no control over Woods. They further claim the real problem with time sheet inaccuracy occurred after Smith’s association with Accutemp.

They re-submitted some of the letters from other employees to support their position that Woods submitted hours for payment that he did not work.

ANALYSIS

This matter has been investigated and reviewed three times. No new information has been presented. With the diminishing resources available to the Branch it would be difficult to request a new and complete re-investigation without strong evidence to support such an order. The request for a new investigation is denied.

The up-island technicians had a different set of working conditions than those in Victoria. This was addressed in the original decision. The up-island technicians started and stopped work based on the demands of their clients and, in most cases, were not paid for overtime. When working in Victoria they, according to the letter from Smith, were free to work extra hours and start and stop work at different times. The November 20, 1997 time sheet covers hours that Woods worked in Victoria. Woods claims he started earlier than the Victoria technicians and Smith approved his hours.

In their review of Woods' time sheets Accutemp changed the November 20, 1997 time sheet to reflect an 8:00 am start rather than the 7:30 am start. The evidence of Accutemp states all employees in Victoria start work at the same time and same location, 3375 Whittier Street. They claimed Smith was not Woods' supervisor however the letter from Smith appears to cover the up-island technicians when working in Victoria. I will allow the one-half hour claimed by Woods.

There appears to also be a one-hour reduction in the November 20th time sheet on the line showing a non-billable sales quote of 1 hour for the 7-11 on Esquimalt Rd. That amount has been circled and crossed out at the bottom of the page. The time sheet instructs an employee to indicate the results of a sales call or quote under "Remarks". There is no indication of results or comments under "Remarks" by Woods on the time sheet other than the name "George". It was the policy of Accutemp that a supervisor must approve all non-billable time.

Woods claims his actual hours were 9.25. The delegate awarded 7.75 hours without explanation. Woods has documented the time spent that day on his time sheet including an unpaid lunch from 12:00 to 1:00. An employee is entitled to be paid for time spent when under the direction of the employer. I will allow the one hour claimed for a sales quote.

Accutemp reduced the time on the March 12, 1998 time sheet by one hour for lunch with technicians. The time sheet shows a job start of 7:00 am in Lake Cowichan and a finish time of 7:30 pm in Victoria. There is no claim for travel time from Nanaimo to Lake Cowichan. Woods apparently worked there for four hours, leaving at 11:00 am and drove to Victoria working at the Aberdeen Hospital from 11:00 am until 3:30 pm. There is no indication which job or if both paid the travel time to Victoria.

Woods charged 3.5 hours for a 4.5 hour period he was at Aberdeen Hospital. It would appear he deducted one hour from his time for lunch although the time sheet does not specifically indicate that. Accutemp reduced his time by a further one hour, apparently because Woods did not specifically show lunch, one hour. They apparently did not check the total elapsed time versus the time claimed and allowed 10.5 hours pay. For some reason, which is not identified, the delegate reduced this amount by a further one hour to 9.5 hours. I believe both Accutemp and the delegate are incorrect in this instance and Woods is entitled to the 11.5 hours claimed. This produces a two-hour increase in pay for Woods.

The May 5, 1998 time sheet shows Woods had a job start of 7:30 am and finish time of 7:00 pm for a total of 11.5 hours. Accutemp reduced the time sheet by one hour for lunch and two hours for dinner for a

total of three hours, allowing 8.5 hours pay. The delegate awarded 10 hours pay. Woods claims he took no lunch that day and reduced his time by one hour for dinner with the General Manager. He arrived home at 8:00 pm, which included travel time; therefore he still claims 11.5 hours. Accutemp claim Woods had dinner with the General Manager from 17:00 until 18:51. That precise time of 18:51 was probably taken from the restaurant receipt as Accutemp had used those times before in their review of Woods' time sheets.

The time sheet completed by Woods for the day shows he worked the last location from 3:30 pm to 7:00 pm, which seems in conflict with the evidence of Accutemp regarding when dinner began and ended. Woods claims he left the restaurant at 7:00 pm to return home. This is also in conflict with the time sheet unless the customer paid for the time taken for dinner. Because of the confusion I will agree with the delegate who had the advantage of questioning Woods in respect to this time sheet and the amount of ten hours pay is confirmed.

The June 4, 1998 time sheet shows an 8:00 am start time and a 5:30 pm finish time. Woods has claimed 9.5 hours for the day. Accutemp reduced the time for Woods by 4.5 hours as they claim there was no work ticket or confirmation slip received for the Zaicana job. They also reduced Woods' time by one hour for a lunch break. Woods claims the Zaicana job was listed as a "non-billable" warranty n/c and was approved by his Area Manager by his initials GRM on the time sheet. Woods also claims he did not take a lunch break that day. The delegate reduced Woods' hours to 5.5 without any explanation.

The hours worked by Woods on the Zaicana job were 4.5 between 8:00 am and 12:30 pm and again for 1.0 hour from 4:30 pm until 5:30 pm for a total of 5.5 hours. Both of these times were entered in the warranty n/c column and appear to be covered by the GRM initials. I am not aware if the one-hour between 4:30 and 5:30 is approved by Accutemp but not the 4.5 hours between 8:00 and 12:30 or whether they overlooked the one-hour in their review of the time sheet. If Woods did perform the work on Zaicana he is entitled to be paid for that time whether a work ticket was issued or not.

The letter from Gary McLeod, the Area Manager, dated October 14, 1997 to the up-island technicians states, in part:

11. Invoice Policy Every service technician, apprentice and installer will complete an invoice for every call made. The minimum service call charge will apply to each call made. "No charge" or "Warranty" service must be approved by myself.

Woods appears to have followed that policy if the initials GRM are, in fact, those of his Area Manager. As indicated above, if work is performed with the knowledge and under the direction of the employer the employee is entitled to be paid.

We have no indication why the delegate reduced the time for Woods to 5.5 hours. Based on the information on the time sheet I am prepared to accept Woods' claim of 9.5 hours. This will increase Woods' entitlement by four hours.

Woods also claims there are two entries on the June 4, 1998 time sheet relating to June 5 and June 6. He claims these entries were placed there by the Area Manager approving work Woods had performed on those days at Mill Bay totalling 15.25 hours. Woods claims he has never been paid for this time. The delegate did not enter any hours for Woods for June 5 or 6 and we have no explanation except to assume there are no time sheets for those days on record. If this were warranty work the Area Manager did not explain it although on the June 5 entry of 10.5 hours there is a corresponding entry under "warranty n/c"

of 3 hours and 1 hour under “sales call”. This leaves 6.5 hours apparently not covered by the non-billable section. As June 5th was a Friday we have no explanation why Woods did not submit a regular time sheet for his time on that day and for the 4.75 hours on June 6th. Without more evidence, such as customer invoices, to support the claim for those days it is not possible to include that time.

The final disputed time sheet is for August 10, 1998. Woods claims a start time of 8:00 am and a finish time of 3:30 pm for a total of 7.5 hours. Accutemp have reduced the start time to 9:00 am apparently, according to Woods, because he went to Canadian Tire for supplies for the job. It is not possible to read some of the notes on the time sheet, however the hours claimed for the Curling Club for the period 8:00 am to 10:00 am are clear and, unless the Curling Club objected and we have no legible evidence they did, Accutemp was paid for that time. There is no evidence to indicate if Accutemp invoiced the Curling Club for the two-hour period. Even if they were not paid, Woods is claiming he was working as he went to the work location, unloaded his special equipment, and then went to Canadian Tire.

The time spent going to a supplier for supplies is working time and should be paid, however, Woods has not explained why he went to the work site, unloaded his equipment, and then went for basic supplies rather than go directly for supplies before proceeding to the work site. We do not have the benefit of that information and, as we have no explanation from the delegate, I suspect the time on the Canadian Tire receipt showed a time considerably later than 8:00 am. The delegate and Woods had the opportunity to explore that issue and the delegate reduced Woods’ time by one hour. Without a reasonable explanation to the contrary the award of the delegate should stand.

The result of the review of all of the information supplied by the parties indicates an increase in the number of hours owed Woods as follows:

November 20/97	1.5 hours
March 12/98	2.0 hours
May 5/98	0.0 hours
June 4/98	4.0 hours
June 5 & 6/98	0.0 hours
August 10/98	<u>0.0 hours</u>
Total	7.5 hours

ORDER

In accordance with Section 115 of the *Act* I vary the Determination dated January 29, 2001 to show Woods is owed \$5724.21 plus 7.5 hours (plus concomitant vacation pay) as indicated above. Additional interest is to be calculated in accordance with Section 88 of the *Act*.

James Wolfgang
Adjudicator
Employment Standards Tribunal