

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 -

Wayne Robinson

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE NO.: 2000/480

DATE OF HEARING: September 11, 2000

DATE OF DECISION: November 21, 2000

Robinson had been a resident in the housing complex and for some time had been a volunteer in assisting with the workings of the treatment plant. He became quite interested in the plant and even took a course on a voluntary basis on the maintenance and upkeep of such a treatment facility. He was subsequently hired by the Society to take over the job under the supervision of a consulting company.

Mr Robinson had full-time employment as a prison guard and it was understood that his work at the plant would be scheduled around his shifts at the prison. He agrees that the board of the Society asked him at the hiring meeting whether he would work four hours per day. He says that he told the board that his work at the plant would have to be scheduled around his shifts and that many things at the plant did not require daily testing.

Robinson testified at the hearing that it was his own decision as to what days he worked and what hours he worked. He did, however, submit timesheets that showed that on many days he worked less than four hours and these timesheets were initialed by a member of the Society's executive. Despite this, it was clear that the Society never controlled Robinson's schedule. He agreed at the hearing that he set his own hours, took days off when he pleased, had his own set of keys, and came and went as he chose.

The Society paid Robinson for the hours that he worked and for which he requested payment. Problems did not arise until Robinson claimed that he should be paid the minimum four-hours even when he chose to work as little as half an hour. The Society immediately responded that in such a situation he would have to agree to work the four hours on fewer days per week. Robinson would not agree to this formula and the employment contract terminated.

Robinson disagreed with many of the facts alleged by the Society but the question before me is not whether the Society is right or wrong but rather whether the determination is wrong.

I have reviewed the determination carefully, listened to the evidence at this hearing, and considered carefully the submissions of the parties. My conclusions are as follows:

1. Robinson was an employee. The Director's delegate considered the proper legal tests and came to a reasonable conclusion on this issue. The Society did not appeal this point and therefore for the purpose of my decision Robinson must be considered an employee.
2. Minimum Daily Hours: the Director's delegate looked at this issue thoroughly and carefully. She noted two significant issues in the provisions of section 34 that were particularly appropriate to this case. She noted that an employee must be paid at least the minimum 4 hours if an employee reports for work "on any day as required by an employer".

The Director's delegate investigated this issue carefully and concluded that Robinson attended at the plant on many more days than would have been required by the employer. She found that if he was not "required" to report for work then the four-hour minimum did not apply.

The second issue she identified was that under section 34(2)(a) the four-hour minimum does not apply if the work is stopped for a reason beyond the employer's control. She found that Robinson controlled his own hours and worked without direction or supervision by the employer. She found that when Robinson left work, having worked less than four hours, he did so of his own accord and that it was beyond the employer's control.

At the hearing before me the onus is on the appellant to persuade me that the determination was wrong. I was not persuaded that the delegate made any mistake of fact or that her conclusion on this issue was not reasonably based on the legislation and the jurisprudence of this tribunal.

3. Hours Free from Work: the appellant did not dispute this issue nor did the Society.
4. The issues of compensation for length of service, statutory holiday pay, and annual vacation pay were not disputed before me.
5. Mistreatment Because of Complaint: Robinson had sought advice or information from the Branch about some of the above issues and relayed that information to the Society. When the Society received the information there was a meeting between the parties that resulted in termination of employment. The Director's delegate was not satisfied that the termination was in response to Robinson's involvement with the Branch but rather it was a conflict of personalities or an inability to reach a compromise.

I am not persuaded that the delegate was wrong. It appears to me that the Society was attempting to reorganize the job description in order to comply with the act and to minimize the expense of compliance. Robinson was reluctant to cooperate with the Society and when no compromise could be arranged it was inevitable that the employment could not continue.

The Society does not dispute the amounts found by the Director's delegate to be owing to Robinson and as a result of my findings above I conclude that the Determination should be confirmed.

ORDER

Pursuant to section 115 of the *Act* I order that the determination is confirmed.

John M. Orr

John M. Orr
Adjudicator
Employment Standards Tribunal