

**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-

Multiwood Products (1996) Inc.  
("Multiwood ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	C. L. Roberts
<b>FILE NO:</b>	98/594
<b>DATE OF DECISION:</b>	December 16, 1998

## DECISION

This is a decision based on written submissions by Ronald Pilling on behalf of Multiwood Products (1996) Inc., K. J. MacLean, delegate of the Director of Employment Standards and Rick Koch.

## OVERVIEW

This is an appeal by Multiwood Products (1996) Inc. ("Multiwood"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued August 19, 1998. The Director found that Multiwood contravened Sections 17, 58 and 63 of the *Act* in failing to pay Craig Giles ("C. Giles"), Brent Giles ("B. Giles"), Rick Koch ("Koch") and Tracey Potter ("Potter") compensation for length of service, wages and vacation pay, and Ordered that Multiwood pay \$1,152.67 to the Director on behalf of the employees.

## ISSUE TO BE DECIDED

Whether the Director correctly determined that Multiwood contravened the *Act* by failing to pay compensation for length of service.

## FACTS

The Determination recites few facts in respect of the complaints. However, the delegate found, following his investigation, that the employment of C. Giles and B. Giles was terminated as a result of a work shortage. He concluded that the Giles' were entitled to one week wages as compensation for length of service given that no written notice of termination or compensation for length of service was given to them.

With respect to Koch, the Director's delegate concluded that since Multiwood did not deny that Koch worked on November 3, 1997, nor respond to a request to pay wages, that Koch was entitled to the wages as claimed.

With respect to Potter, the Director's delegate found that Multiwood agreed that Potter's employment was terminated without notice of compensation for length of service when she was off work as a result of a motor vehicle accident. He concluded that she was entitled to compensation for length of service and a balance of vacation pay owing.

## ARGUMENT

Multiwood argued that the company's operations, which were under the management of the Giles' father, were foundering. Mr. Pilling states that he was asked to assume the management of the company, and that the Giles' indicated they would not work under his management.

Pilling contended that because the Giles' did not show up for work on October 27, they were considered to have quit. Further, he argues that written notice of termination was given to all

employees who did show up for work that day, and had the Giles' also shown up, they would have been given proper notices.

Multiwood argues that Koch did not show up for work on November 3, and that it never conceded that he did. Mr. Pilling further contends there is no evidence he was at work.

Mr. Pilling states that Potter did return to work and did work for 10 hours during the week of November 1 - 5. It contends that she was given proper termination notice of termination.

Koch states that when he showed up for work on November 3, the company had a meeting with the staff. All the employees were being advised about the management changes. During the meeting, the employees were asked if they wanted to stay on and find out what happened, or take a lay off. Koch states he opted for the lay off, but was told he could stay and work the day. When he went to punch out at the end of the day, his time card was missing. Koch states that Pilling was not present on that day.

Koch also denies Pilling's statement that written notices of termination were given to all employees who showed up for work. He argues that none of the employees were given written notices of termination.

The Director's delegate relied on Records of Employment (ROE's) issued by Multiwood President Hail Park to C. Giles and B. Giles on November 1, 1997. It indicates that both were laid off due to a work shortage. No recall was attempted. The delegate calculated length of service on Multiwood's payroll records.

Mr. McLean stated that Multiwood had not taken a position on whether one day's wages was owing to Koch. However, he indicates that he had no evidence from other employees who would testify that Koch did not work that day.

The Director's delegate further contends that if Multiwood did give Potter proper written notice of layoff, it ought to have produced it. He states that Potter told him that she did not get a notice of lay off, and until the appeal was filed, Multiwood had acknowledged that.

## ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

I find that not only is Multiwood attempting to provide evidence at the appeal hearing which it ought properly have put to the Director's delegate during the investigation, it also contradicts the records provided by Multiwood to the employees. For both of those reasons, I dismiss the appeal.

Mr. Pilling's appeal letter states "statements by witnesses can be produced to substantiate the Giles's position", that "we do deny that [Koch] worked on November 3..." and that "[Potter] had returned to work and had worked 10 hours during the week of November 1-5, 1998 (sic)".

This information is evidence which was available to Multiwood at the time the Director's delegate was investigating the complaint, and ought to have been presented at that time. The fact that it was not is not a grounds for appeal. The Tribunal has held on many occasions that it will not accept

evidence at a hearing which ought properly to have been put to the Director's delegate at first instance. (see *Kaiser Stables* BC EST D#058/98, and *Tri West Tractor Ltd.* BC EST #D268/96).

In any event, I note that Mr. Pilling's submissions contradict the documents prepared by the President of Multiwood which indicate that the reason for issuing the Giles' ROE was lack of work. There is no evidence before me to support Wildwood's contention that the determination is in error.

Consequently, I dismiss the appeal.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination dated August 19, 1998 be confirmed in the amount of \$1152.67, together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**