

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 -

Lyle Pigeon
("Pigeon")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 97/540

DATE OF DECISION: December 9, 1997

DECISION

SUBMISSIONS

Lyle Pigeon for himself

Dirk Weymann for Fraser Valley Building Supplies Inc.

OVERVIEW

Mr. Lyle Pigeon filed an appeal pursuant to section 112 of the *Employment Standards Act* (the *Act*). The appeal seeks review of a determination by a Delegate of the Director dated June 24, 1997 (the “Determination”).

The Delegate found that upon his termination of employment, the Company owed Pigeon wages and vacation pay. The Delegate also found that the Company owed Pigeon for Statutory Holiday pay. Pigeon’s other claims were dismissed.

ISSUES TO BE DECIDED

Pigeon submits that the Delegate erred in his determination of certain issues that were raised in the original complaint these were the Company’s payment of overtime, statutory holiday pay, laundry costs and the payment of the final pay cheques. Pigeon’s appeal also raises several issues that were not mentioned in his original complaint: that the Company failed to pay for four sick days, failed to pay for work during lunch breaks, waiting for customers to leave at the end of the shift and coffee breaks, failed to pay for attendance at staff meetings and product seminars and gave short notice for the change in his work schedule.

PRELIMINARY ISSUE

Three preliminary matters need to be addressed.

First, the Tribunal deals with appeals of determinations made by the Director or a delegate. In numerous decisions the Tribunal has explained that the original determination stands unless the appellant can prove it to be incorrect. Pigeon has the onus of proving that the Delegate erred in his decision.

Second, the Tribunal will not allow an appeal of a determination on issues that were not raised in the original complaint. The original complaint form requires the complainant to “Outline the details of your complaint...” Pigeon raised four issues in his original complaint. The Delegate’s Determination dealt with these issues. In his appeal of the

Determination, Pigeon raised a number of new issues. The Delegate and the respondent could not be expected to deal with issues not clearly put before them in the original complaint.

Finally, the Delegate issued his Determination on June 24, 1997. Pigeon filed his appeal with the Tribunal on July 16, 1997. It was a lengthy submission that disputed much of the Delegate's Determination. On August 11, 1997, the Company filed its reply submission with the Tribunal. The Company's submission addressed virtually every point raised by Pigeon in his appeal.

After a review of the Delegate's decision and the submissions, the Tribunal wrote to Pigeon on September 30, 1997. The Tribunal provided Pigeon with the Company's submission and copies of the documents attached to the Company's submission. The Tribunal's letter states: "We request your reply no later than October 14, 1997." Pigeon did not, as requested, reply to the Company's August 11, 1997 submission.

As in all cases, the Tribunal's form for filing an appeal requested Pigeon to set out the reasons for his appeal, including documents that supported his case. The Company was expected to respond to both of these areas. Similarly, when asked by the Tribunal, Pigeon was expected to respond to the Company's submission. Pigeon had to explain what areas of the Company's reply submission he agreed and disagreed with.

The Tribunal understands that some individuals and some companies may be unfamiliar with the Tribunal's appeal process. The Tribunal will show some flexibility in the process of appeal submissions. However, it can not be ignored that Pigeon did not attempt to dispute the Company's August 11, 1997 submission.

FACTS

Pigeon began employment with the Company on August 2, 1995. On December 13, 1996 Pigeon was laid off from work. The lay off was effectively a termination. He then filed his complaint with Employment Standards.

The Delegate addressed three specific points in the Determination. First, the Company deducted a certain amount of money from Pigeon's last cheque. Apparently Pigeon had a charge account with the Company and there were monies still owing. The Determination reads:

The employer claimed that you and the store credit manager had agreed to take money from your final cheque to pay your bill. Since technically there can be no deductions without written authorization, a cheque in the amount of \$471.14 to cover these deductions has been sent to you.

The Company's August 11, 1997 submission explains how the calculation of withheld wages resulted in a repayment of \$580.77.

The Delegate also found that Pigeon had not been properly compensated for Statutory Holiday pay. The Company also sent Pigeon a cheque in the amount of \$296.43.

Finally, The Delegate dismissed Pigeon's allegation that he was owed for overtime worked. The Determination reads:

You were on the work site 9 hours, but when the one hour of breaks are considered the actual hours worked is 8 and no overtime was incurred.

ANALYSIS

At the outset, Pigeon's submission raised issues not relevant to the appeal of the Delegate's Determination. For example, he raised concerns about proper compensation to other employees. This appeal will deal with issues pertaining only to Pigeon.

As noted above, this decision will not deal with those issues raised in the appeal that were not raised in the original complaint. These are the allegations that the Company failed to pay for four sick days, failed to pay for work during lunch breaks, waiting for customers to leave at the end of the shift and coffee breaks, gave short notice for the change in his work schedule and failed to pay for attendance at staff meetings and product seminars.

I should note, however, that the Company's reply responded to those complaints that were specific enough to answer. The Company's submission explained the basis on which sick days were entitled and paid to Pigeon. There is no basis to find that four days of sick leave were ever deducted from Pigeon's wages.

The Company also addressed the staff meetings and product seminars. The issue was whether the Company, as required under Section 34(1) of the *Act*, either directly or by inference required Pigeon to attend the meetings. Pigeon's submission demonstrated that attendance was voluntary. He stated that he went "many months (8? 10? 12?)" without attending a meeting or a seminar. He then went to one meeting and never went again. He did not suggest there were any negative consequences following his decision not to attend.

The Company's submission stated that with two lunch rooms, employees were not supervised as to when they took their breaks. It also evaluated Pigeon's paid hours of work. Pigeon was paid for 8 hours worked and as a benefit, employees were paid .5 hours at straight for time not worked on a coffee break. Pigeon's further allegations of not being paid during lunch breaks were so general, the allegations could not be refuted by the Company.

Finally, Pigeon states that the Company's pay stub did not comply with section 27 of the *Act*. The information given to Pigeon in the Delegate's investigation and the Company's submission resolved that allegation

I turn now to the issues of the appeal that are before me. Pigeon's original complaint sought all documents. His appeal submission reads:

Also in my letter of December 16, 1996 I demanded an accounting of all hours worked, rate of pay, deductions made and the reasons for those deductions, holiday pay and overtime pay calculations. They [the Company] failed to comply with that demand, as well.

In his appeal submission, Pigeon once again says that he sought documents because he wanted to know how monies owed were calculated. The Company's reply submission explains, in detail, how all calculations were made. For example, in its reply submission, the Company explains the calculation of wages earned by Pigeon, vacation time taken, vacation pay owed, hours of work and overtime based on Pigeon's time cards. As noted above, Pigeon did not dispute these calculations in a reply submission.

Pigeon raised the Company's retention of wages and vacation pay owed. As the Delegate concluded, Pigeon owed the money but the agreement to repay was not in writing. The Company's submission reviews his length of service, vacation time taken and money owed to Pigeon. The Company's submission explains how that sum owing was calculated to be \$580.77 and that a cheque was issued to Pigeon. Similarly, the Delegate found that the Company owed Pigeon \$296.43 in Statutory Holiday pay. The Company's submission explains the calculations.

The Company reviewed Pigeon's time cards and found that he worked six consecutive days on two occasions and seven days once from a Sunday to Saturday. It acknowledged that it owed Pigeon three hours for work performed on December 31, 1995. The Company agreed it owes Pigeon a further \$136.88.

Pigeon claimed three dollars for each week of employment as compensation for cleaning a particular type of shirt that the Company required him to wear at work. According to the Delegate, Pigeon had no receipts for the cost of cleaning. Pigeon says needing receipts for cleaning shirts was "ludicrous". I agree with the Delegate; to claim a charge, some proof of payment is necessary. I also agree with the Company that putting his work shirt in with his regular laundry was not a cost that the Company was required to support.

Finally, Pigeon seems to say that he has not been able to cash the cheques given to him by the Company. I do not fully understand his reasons. I agree with Pigeon, however, that the Company can not prevent Pigeon from cashing the cheques for money found owing to him by the Delegate. The Company can not make the cashing of the cheques conditional to any other terms of settlement. All cheques owing to Pigeon, including a cheque for \$136.88, must be available for Pigeon to cash immediately. If Pigeon refuses to cash the cheques, however, that is his decision and will not be dealt with by the Tribunal.

Further, Pigeon noted that he did not receive interest on the money owing to him. Interest should have been calculated and paid to Pigeon by the Company. I will ask the Delegate to determine the appropriate amount of interest owing on all money owed to Pigeon.

ORDER

Pursuant to section 115 of the *Employment Standards Act* the Delegate's Determination dated June 24, 1997 is confirmed in virtually all respects. The Delegate's Determination is varied in two respects: the Company owes Pigeon a further \$136.88. The Delegate will determine the interest on all monies owed by the Company to Pigeon.

Adjudicator
Employment Standards Tribunal