

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 -

Water Management Technologies Inc.

(“Water Management”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Lorna Pawluk

FILE NO.: 97/761

DATE OF DECISION: December 11, 1997

DECISION

OVERVIEW

This is an appeal by Water Management pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination dated September 26, 1997 and issued by the Director of Employment Standards ("the Director"). The Determination concerns breach of the *Skills Development and Fair Wage Act, R.S.B.C. 1996, c. 427* ("*Fair Wage Act*").

FACTS

The Determination concluded that Water Management contravened the "Wages and Benefit Section of the Skills Development and Fair Wage Act". It ordered the employer to cease the contravention and to pay \$12,664.79 to each of Chester Crump and Thomas Rata ("Rata"). The amount paid to Crump is not at issue here. It is unclear from the face of the Determination precisely how Water Management breached the *Fair Wage Act*, why \$12,664.79 was owing to Rata or what period of time had been considered. Under the section labeled "Reasons", the Determination states that the employer "has a long record of not complying with the requirements of the above legislation". It also states that the employer's records are inconclusive as they fail to record hours. It also notes that Rata had been paid for each water meter which he installed. There are no other details about the relationship between the parties, the nature of their dispute or the breach of the legislation.

In the submissions supporting this appeal, Water Management maintains that it has payroll records "not formally requested by Employment Standards" which show that the hourly rate paid was "far greater" than that required by the *Fair Wage Act* and that Rata was an apprenticed plumber from August 21, 1996. Attached to the submission were copies of what appears to be computer records of payment to Rata. Also submitted was a photocopy of "Apprenticeship Agreement" between Water Management and Thomas Rata. Part of the document states: "Registered with the office of the Director of Apprenticeship on the 21 day of August, 1996 (underlined portions are handwritten in original document)." There is no signature in the space labeled "Director of Apprenticeship or Designate".

In response, Rata denies being a registered apprentice and says he has timesheets after August 21, 1997 showing that he was employed as an installer. The Director's delegate also responded by a memo dated November 6, 1997 to the Registrar of the Employment Standards Tribunal. Parts of the memorandum are unclear but it would appear that the delegate contacted the Apprenticeship Branch and determined that Rata was not a registered apprentice: "an application does not constitute registration". There is no explanation as to why the document had never been registered. The delegate said that Rata advised that he (Rata) had not worked with a certified plumber while he was employed by Water Management. The delegate also notes that this contravenes the *Fair*

Wage Act. In response to the submissions about record keeping, the delegate stated that a Mr.Sveinson of Water Management said he kept records of Rata's hours once it was thought that Rata was a registered apprentice as this was a requirement of the *Fair Wage Act*.

ANALYSIS

In proceedings before this Tribunal, the onus is on the appellant to show that a Determination is in error. (*Arbutus Environmental Services, B.C.E.S.T. No. D002/96*; *World Project Management Inc., B.C.E.S.T. No. D325/96*). In this case, the employer takes issue with the status of the employee whose wages are in dispute and says that it has documentation showing compliance with the *Fair Wage Act*. The submissions fail to explain why those documents were not disclosed to the Director's delegate during the investigation of the complaint. Ordinarily, neither of these grounds would be grounds for a successful appeal, I will not dismiss the appeal.

There are problems with the Determination which lead me to conclude the only appropriate course of action is to refer the matter back to the Director under Section 115(1)(b) of the *Act*. To begin with, the Determination does not identify a breach. Characterizing the employer as having a history of non-compliance with the *Fair Wage Act*, even if true, is not relevant since it is the wages owed to Rata that are at issue. Submissions on appeal suggest that the dispute may have something to do with Rata's status as an apprentice but the Determination does not identify precisely what type of work Rata performed or what period of time is covered by the order to pay wages.

As for the employer's claim that no formal request was made for the documents which it now submits in support of this appeal, I note that these documents, if available at the time of the original investigation, are not admissible in these proceedings unless there are compelling reasons to admit them here for the first time. (*Jhali, B.C.E.S.T. No. D159/97*).

ORDER

Pursuant to Section 115(1)(b) of the *Act*, I order that this matter be referred back to the Director.

Lorna Pawluk
Adjudicator
Employment Standards Tribunal