

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-

Stephen C. Vickers

(“Vickers”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/209

DATE OF HEARING: December 11th, 1997

DATE OF DECISION: January 28th, 1998

DECISION

APPEARANCES

Stephen C. Vickers on his own behalf
Aiyaz A. Alibhai for Jackpine Forest Products Ltd.

OVERVIEW

This is an appeal brought by Stephen C. Vickers (“Vickers”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on March 17th, 1997 under file number 060376 (the “Determination”). By way of the Determination, the Director dismissed Vickers’ complaint respecting unpaid commission earnings, vacation and statutory holiday pay as against Jackpine Forest Products Ltd. (“Jackpine”).

This matter originally came on for hearing before me on July 23rd, 1997 at which time I issued an award with respect to certain matters in dispute between the parties (see BC EST #D355/97). It was agreed that following the July 23rd hearing, the parties would meet and attempt to negotiate a final resolution of the dispute.

I understand that while the parties have reached certain understandings, they were not able to negotiate a final resolution of the matter and, accordingly, the appeal hearing was set down for a further hearing which was held at the Tribunal’s offices in Vancouver on December 11th, 1997.

FACTS

Vickers was formerly employed as a sales representative with Jackpine. His earnings were based on a “sliding scale” commission formula that was based on the selling price of the product (doors and windows) to the customer. Commissions were payable when the product was shipped to the customer and an invoice issued.

Under the commission structure in place during the relevant time frame, Jackpine’s sales representatives earned larger percentage commissions if the ultimate selling price to the customer was not significantly reduced from the company’s “price book”. Jackpine sales representatives had a reasonable amount of discretion in terms of discounting the “list prices” set out in the company’s “price book”. In effect, the larger the discount from the “list price” the smaller the percentage commission that would be payable. If the discount from the “list price” was 9% or

less, the commission payable was 14% of the sale price; if the discount from the “list price” exceeded 40%, no commission was payable whatsoever.

I find that, in several instances, Vickers was not entitled to any commission because the selling price to the customer was discounted by more than 40% from the company’s “price book”.

ISSUE TO BE DECIDED

Vickers maintains that he has not been paid his full commission earnings on 50 invoices involving some 23 Jackpine customers. During the appeal hearing, Vickers abandoned several claims on the basis that he was unable to provide any documentary or other evidence to support his claim for payment. The invoices set out below constitute the only claims that were advanced by Vickers at the appeal hearing.

FINDINGS

After considering the documents submitted by the parties and the testimony of Mr. Vickers, on his own behalf, and of Mr. Brian Crouch, on behalf of Jackpine, I find that Vickers is entitled to the following commissions:

<u>Customer</u>	<u>Commission Payable (\$)</u>
Horie	0.00
Stoner	0.00
Carlbec	268.08
Bittorf	62.93
Double D Scenery	0.00
Fortune Mountain	0.00
Vinegar	0.00
Blackwell	282.28
Burns	0.00
Tsai	5,440.26
Onside Restoration	58.81
Pacific Inn	0.00
Witzke	0.00
Premise	39.60
Davidson	0.00
VanCity	55.42
Gibson	237.16
Woodland	<u>0.00</u>
TOTAL	<u>\$6,444.54</u>

In addition to the above-noted commissions payable, the parties have advised me that they have agreed on an additional \$7,487.42 in unpaid commissions. Thus, the unpaid commissions payable

to Vickers total \$13,931.96. However, the parties have also advised me that Vickers was advanced, as draws against commissions to be earned, a total of \$18,700.

Accordingly, I find, as did the Director, that Jackpine in fact does not owe any monies whatsoever to Vickers; indeed, it would appear that after accounting for draws received and commissions payable, Vickers was in fact overpaid by Jackpine. In light of this finding, I must also conclude, as did the Director, that Vickers is not entitled to any additional monies on account of vacation or statutory holiday pay.

ORDER

Pursuant to section 115 of the *Act*, I order that Vickers' appeal be dismissed and that the Determination in this matter be confirmed as issued.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal