

An appeal

- by -

Ivan Fierbach
(“Fierbach”)

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: M. Gwendolynne Taylor

FILE No.: 2001/656

DATE OF DECISION: November 14, 2001

DECISION

OVERVIEW

Pursuant to section 112 of the *Employment Standards Act*, Ivan Fierbach (“Fierbach”) filed an appeal from a Determination by the Director dated September 10, 2001. The Director found that Fierbach contravened Section 18(1) of the *Act* by failing to pay wages owed to 4 employees (“the complainants”). The Director ordered Fierbach to pay \$9,916.90.

On September 17, 2001, Fierbach appealed the Determination. The grounds of appeal are that the facts were not clear and Fierbach did not receive payment for the wood and now is on social assistance and not able to pay. In particular, Fierbach submitted that the rate of pay was \$225.00 per cord of wood, and he does not know how many cords the complaints produced or the Ministry of Forests seized.

ISSUE

Does the evidence support the Director’s calculation of wages owed to the complainants?

THE FACTS

Fierbach employed the complainants as shake block cutters in the forest. The blocks were to be transported out by helicopter. However, before the third fly out, the Ministry of Forests alleged trespass violations and seized the blocks. The Director found this effectively terminated the complainants’ employment. The complainants were paid an amount for each cord of wood they put into slings. There were 4 slings to a cord.

The issues before the Director were, for the period of November 15 to 28, 2000: a) the rate of the pay for each complainant; b) the quantity of shake blocks produced; and c) the calculation of wages owing.

The Director determined the rate of pay was \$225.00 per cord. It appears that Fierbach understood the finding was \$450.00 per cord because part of his appeal was that the rate of pay was \$225.00 per cord. The Director broke the \$225.00 into \$125.00 per cord for bucking and \$100.00 per cord for trimming.

The Director relied on the records provided by one of the complainants as being the only reasonable set of records. Based on those records the Director made findings on the quantities produced by each complainant. The Director’s calculations were based on rate applied to the quantity, plus vacation pay. The Director added statutory interest.

FINDINGS

Fierbach did not challenge the records relied on by the Director. It is apparent that he has no other records. He did not provide information from the Ministry of Forests on the quantity seized.

I accept that Fierbach and the Director agree that the rate of pay was \$225.00 per cord. I find that is the rate the Director used. I further find that the Director's Determination is based on the available information and is reasonable. The Tribunal has no ability to grant relief based on financial hardship.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination issued September 10, 2001.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal