

An appeal

- by -

John Ian Woods
("Woods")

- 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: James Wolfgang

FILE No.: 2001/690

DATE OF DECISION: December 31, 2001

DECISION

OVERVIEW

This is an appeal by John Ian Woods (“Woods”) pursuant to Section 112 of the *Employment Standards Act (the “Act”)* of a referral back to the Director of Employment Standards (the “Director”) of a Determination dated January 29, 2001. Accutemp Refrigeration and Air Conditioning Ltd (“Accutemp”) had appealed the original Determination, Woods did not.

BC EST #D 426/01 referred the Determination back to the Director with instructions to review the eighty-two time sheets for Woods which were presented at the hearing by Accutemp. The remainder of the Determination was confirmed.

This case has a somewhat long history. The first delegate was seconded from another department and returned after the original Determination was issued. Another delegate handled the appeal by Accutemp and attended part of the hearing. The delegate was available for all of Accutemp’s evidence and only a part of Woods’ evidence. The evidence from Accutemp consisted of witnesses giving evidence on their work experience with Woods and further changes in what they claim is the lack of accuracy in Woods’ time sheets. These changes were in addition to those that had been made during the original investigation.

Woods has claimed from the beginning that the original investigation was flawed and should have been done differently. However Woods did not appeal the original Determination and his access to a full appeal is limited.

In a letter dated September 27, 2001 the Delegate for the Director issued an adjusted amount owed Woods of \$4,564.67 from an original amount of \$10,406.23.

Accutemp has accepted the adjusted amount however Woods has not.

ISSUE

Should the revised Determination be referred back to the Director for a further review?

ARGUMENT

Woods claims Decision BC EST # D426/01 which referred the Determination back to the Director requires another investigation of the case.

Woods argues the original delegate of the Director disregarded his daily time sheets and accepted the altered time sheets of Accutemp. He claims the Accutemp time sheets for him were altered without his knowledge or consent. Woods states the delegate accepted statements from witnesses

for Accutemp and, based on those statements and interviews, accepted Accutemp's version of his time sheets. He further claims the delegate did not meet with him personally following his filing a complaint nor give him an opportunity to defend himself or answer the allegations of Accutemp before issuing the Determination. He also claims the delegate did not contact any of the witnesses he put forward even though he had provided names and telephone numbers. The Determination found Woods to be owed \$10,406.23 however Woods claims if his unaltered time sheets were used the amount would have been nearly double.

In his appeal, Woods provided 6 examples of errors that were made in the eighty-two time sheets. Accutemp withdrew those time sheets at the hearing after the explanation by Woods or after further investigation. He also argues that time sheets were changed by the delegate in the review without any explanation and he was not given an opportunity to explain how they were completed. Woods claims he does not know which time sheets the delegate changed or why and without that information he cannot explain the difference between Accutemp's time sheets and his original time sheets.

Accutemp have indicated there are some errors in the submission by Woods to the Tribunal however they do not believe they are important enough to change the outcome and have accepted the revised amount.

THE FACTS AND ANALYSIS

Woods has claimed he was never interviewed directly by the Director's delegate, either during the original investigation of his complaint or during the review. He claims he has evidence that would prove his time sheets were correct and that was not taken into account. He further claims he was not given an opportunity to review Accutemp's altered time sheets at the time of the original investigation. There were instances where Accutemp altered Woods' time sheets, either because there was no billable account to charge the time to, which was a violation of the *Act*, or because he did not specify a lunch break. At least in some cases the total time was not charged by Woods i.e. 9 hours elapsed time on the time sheet but only 8 hours charged.

If Woods is correct it seems, for justice not only to be done but also to appear to be done, that he be given the opportunity to present his case directly to the delegate. The matter of the eighty-two time sheets in dispute is referred back to the Director with the suggestion the delegate meet with Woods to determine whether his appeal has merit.

It should be made clear Decision BC EST #D 426/01 did not intend for another full investigation to be undertaken. However, in view of the allegations by Woods, there may be grounds for a more comprehensive review than was undertaken earlier. In the event the delegate finds there is, in fact, merit to Wood's claim the amount owed Woods should be adjusted accordingly.

We must remember there was strong evidence presented prior to and at the hearing that Woods had falsified at least some of his time sheets and that lack of credibility seriously affected his case.

However, Accutemp was not without fault in this case and the review should reflect that time sheets were changed in violation of the *Act*.

ORDER

In accordance with Section 115 of the *Act* I refer the amended Determination by the Director dated September 27, 2001 back for a further review as indicated above. Additional interest is to be calculated in accordance with Section 88 of the *Act*.

James Wolfgang
Adjudicator
Employment Standards Tribunal