

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Chubb's Enterprises Ltd.
("Chubb's")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 95/043

DATE OF DECISION: February 9, 1996

DECISION

OVERVIEW

This is an appeal by Chubb's Enterprises Ltd. (Chubb's) pursuant to Section 112 of the Employment Standards Act (the "Act"), against Determination No. CDET 000214 issued by the Director of Employment Standards (the "Director") on November 27, 1995. In this appeal Chubb's claims that no wages are owed to Reuben John Erhardt ("Erhardt"). The Determination states that Chubb's owes \$93.64 in wages to Erhardt.

I have reviewed the written submissions made by Chubb's and by Erhardt as well as the information provided by the Director.

FACTS

The investigation conducted on behalf of the Director concluded that Erhardt was employed by Chubb's between July 18, 1995 and July 24, 1995 at an hourly rate of \$8.50 per hour.

The calculations attached to the Determination show the total wages earned by Erhardt as \$284.75. Vacation Pay totaling \$11.39 was calculated pursuant to Section 58 of the Act for a total of \$296.14. Chubb's paid wages totaling \$202.50, thereby leaving the amount of \$93.64 as wages owing to Erhardt.

In a letter dated November 13, 1995 from Chubb's to the Employment Standards Branch, Chubb's acknowledges that Erhardt was employed at \$8.50 per hour and makes no mention of any arrangement which would indicate that he was a contractor rather than an employee.

ISSUE TO BE DECIDED

The issues to be decided in this appeal are whether Erhardt was an employee and, if so, whether any wages are owed to him by Chubb's.

ARGUMENT

Chubb's reasons for this appeal are that Erhardt was a contractor, not an employee; that he did not work the number of hours claimed; and that he is not entitled to any additional wages. Chubb's did not provide any documents nor did it make any submission to the Tribunal to support the position it took.

Erhardt's position is that he was employed by Chubb's and is entitled to wages in the amount set out in the Determination.

ANALYSIS

The onus for proving that the Determination should be cancelled or varied rests with the appellant, Chubb's.

In this case, Chubb's letter of November 13, 1995 to the Employment Standards Branch acknowledges that Erhardt was employed at an hourly wage of \$8.50 per hour. Given that acknowledgment and the absence of any substantive submission to the contrary by Chubb's, I must conclude that Erhardt was an employee rather than a contractor. In the absence of any submission by Chubb's which would contradict the Director's Determination, I must conclude that there is no reason to vary or cancel the Determination.

ORDER

I order, pursuant to Section 115 of the *Act*, that Determination No. CDET 000214 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

February 9, 1996

Date

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