

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*

- by -

Paul Schuler  
("Schuler")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 96/042

**DATE OF DECISION:** February 17, 1996

**DECISION**

**OVERVIEW**

This is an appeal by Paul Schuler (“Schuler”) pursuant to Section 112 of the *Employment Standards Act* (“the Act”) against Determination # CDET 000264 which was issued by a delegate of the Director of Employment Standards (“the Director”) on November 29, 1995. The Determination requires Schuler to pay \$210.70 due to non-payment of wages and vacation pay for a former employee, Karen Gill (“Gill”).

In this appeal Schuler argues that no wages are owed to Gill.

**FACTS**

Gill was employed by Schuler as a live-in nanny between October 7, 1995 and October 29, 1995. Gill filed a complaint with the Employment Standards Branch on November 6, 1995.

In a letter dated November 14, 1995 to Schuler, the Director’s delegate set out the details of Gill’s complaint and requested payment of the amount claimed or evidence to prove Gill’

Gill entered the household on Saturday, October 7, 1995 as a ‘part-time’ live-in nanny at an agreed upon salary of \$700.00 per month with room and board rate of \$300.00 per month. She states she started work the next day. It was to be a part-time position in order for her to attend night school classes on Tuesdays and Thursdays which meant she had to be relieved of duties at about 3:30 p.m. on “school” nights. She states that except for leaving early on these days her hours of work were from approximately 9:00 a.m. to 5:00 p.m. Monday to Friday. On occasion she was woken in order to start earlier, and on other occasions she was asked to work in the evenings. She did not keep a record of her daily hours. She states that she received cheques for \$350.00, \$80.00 and cash in the amount of \$20.00 for a total of \$450.00. She states that her last day of employment was October 27, 1995.

The following calculation was provided to support the amount of wages owing:

Period of Employment:	October 8 - 29, 1995
Rate of Pay:	\$7.00/hour (minimum wage)
Regular Wages:	
3 weeks (40 x 7 = 280)	= \$ 840.00

Vacation entitlement:		
4% of \$840.00	=	<u>33.60</u>
Total Wages		\$ 873.60
Less Room and Board:		
<u>300</u> x 22		
31	=	<u>-212.90</u>
Less monies received		<u>-450.00</u>
<b>Total Wages Owing</b>		<b>\$210.70</b>

The Director’s delegate did not receive a response from Schuler and issued Determination on November 29, 1995.

Schuler’s appeal was sent by facsimile and received by the Tribunal

**ISSUE TO BE DECIDED**

The issue to be decided in this appeal is whether Schuler owes Gill wages in the amount set out in the Determination.

**ANALYSIS**

The reasons given by Schuler for this appeal are as follows:

“Both Karen and I had a mutual verbal agreement that she would no longer work for us one week before she left. She indicated that she had no where to stay so we agreed that she could stay with us until she found another job. She was not required to work during that time as I remained home. She did do some baby-sitting and I gave her \$80.00 cash. I don’t owe her anything.”

The reasons and the calculation schedule attached to the Determination provide the rationale used by the Director’s delegate in determining the wages owed to Gill. In the absence of any response by Schuler to the Complaint, the Director’s delegate accepted Gill’s statements as the basis for determining the amount owed by Schuler.

I am now faced with the task of determining whether I should accept Schuler’s description of events (as set out in his appeal) or should I accept Gill’s description of events as set out in her complaint and statements to the Director’s delegate.

Section 28 of the *Act* requires an employer to keep payroll records for each employee. Schuler has not provided any payroll records in support of his appeal. Despite being granted additional

time make a submission to the Tribunal `in response to the information provided by the Director, Schuler has not made any submission. It is implausible that Schuler would allow Gill to remain in his home for one week without being employed as a nanny and for him to pay her \$80.00 for “some baby-sitting” during that time.

On balance, I prefer the statements made by Gill as being more plausible and it is more likely events occurred in the manner described by her.

I conclude that Schuler has not met the onus of proving, on the balance of probabilities, that Gill is owed anything less than the wages calculated by the Director’s delegate.

**ORDER**

I order, pursuant to Section 115(1) of the *Act*, that Determination # CDET 000264 be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

February 27, 1996

**Date**

GC:nc