

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

- by -

Gregory Brothers Holdings Ltd.  
(" Gregory ")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 95/009

**DATE OF DECISION:** May 3, 2001

## DECISION

### OVERVIEW

This is an appeal by Gregory pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. CDET 000164 issued by the Director on November 22, 1995. In this appeal Gregory claims that the accounting performed by the Director and set out on the determination is incorrect.

Consideration of this appeal falls under the transitional provisions of the *Act*. Section 128(3) of the *Act* states:

*If, before the repeal of the former Act, no decision was made by the director, an authorized representative of the director, or an officer on a complaint made under that Act, the complaint is to be treated for all purposes, including Section 80 of this Act, as a complaint under this Act.*

I have completed my review of the written submissions made by Gregory and the information provided by the Director.

### FACTS

Kenneth Peck (“Peck”) was employed by Gregory operating as “Rex Regal” as a mechanic from April 1993 to September 28, 1995. Peck filed a complaint with the Employment Standards Branch (“the Branch”) on October 10, 1995 alleging that Gregory owed regular wages, vacation pay and for a N.S.F. payroll cheque dated September 22, 1995. During the course of the investigation by the Branch, a payroll audit was performed and it was subsequently determined that not only was Peck owed wages and vacation pay, two other employees, Michael Richards (“Richards”) and Keith Cox (“Cox”) were also owed wages earned in the six (6) month period ending September 30, 1995..

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Gregory owes wages and vacation pay to Peck, Richards and Cox.

### ARGUMENTS

Gregory contends that it only owes Peck fourteen (14) days wages at \$160.00 per day and further that it intends to pay this amount prior to the end of April 1996 as it is not operating

at this time.. Gregory also contends that no wages are owed to Richards or Cox and that these employees would verify this information.

The Director contends that the audit of Gregory's payroll records clearly demonstrates that wages and vacation pay are owed to Peck, Richards and Cox as set forth on the determination.

**ANALYSIS**

The burden of proof for establishing that all wages and vacation pay earned was paid rests with Gregory. Gregory's own payroll records have provided the information which is the basis for the determination by the Director. For Gregory to now allege that the payroll records provided to the Branch are somehow not an accurate reflection of the hours worked and the wages and vacation pay paid to the employees is, I submit, a rather unique argument.

There has been no evidence provided to explain this alleged discrepancy between the payroll records and the allegations by Gregory that no wages and vacation pay are owed.

I conclude, based on the evidence before me that Gregory owes the wages and vacation pay as set forth on Determination No. CDET 000164.

**ORDER**

Pursuant to Section 115 of *Act*, I order that Determination No. CDET 000164 be confirmed in the amount of \$10115.07

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**

May 3, 2001

**Date**

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