

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, c. 38

-by-

E-Fish-Ent Fish Company
("E-Fish-Ent ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR:	C. L. Roberts
FILE NO:	96/452
DATE OF HEARING:	December 11, 1996
DATE OF DECISION:	December 15, 1996

DECISION

APPEARANCES

Bryan Mooney	Representing the Appellant
Tracy Brock	Representing herself
Gerry Omstead	Representing the Director

OVERVIEW

This is an appeal by E-Fish-Ent Fish Company ("E-Fish-Ent"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued on July 10, 1996. The Director found that E-Fish-Ent had contravened sections 17(1), 58(1) and 40(1) of the Act and Ordered the company to pay \$2,976.38 to the Director. E-Fish-Ent claims that the Director was without jurisdiction to make the Order, and seeks to have the Determination cancelled.

ISSUE TO BE DECIDED

Whether the Determination of the Director is valid.

FACTS

Tracy Brock ("Brock") worked for E-Fish-Ent from May 18, 1994 to September 8, 1995 as a seafood processor. On August 16, 1995 she filed a complaint regarding the payment of wages with the Employment Standards Branch. During an investigation of that complaint, the Director was advised that the complaint had been resolved, and on October 30, closed the file. On October 31, Brock filed a Notice of Claim in Provincial Court for outstanding wages. On March 31, 1996, the Provincial Court judge ordered the Employment Standards Branch to "...reopen, re-investigate, and determine the liability in the matter of Tracy Elizabeth Brock and E-Fish-Ent Fish Company Ltd. relating to her employment and that be done pursuant to the New Employment Standards Act proclaimed effective November 1, 1995".

On March 5, 1996, Brock filed a second complaint regarding payment of wages. The Director investigated the second complaint, pursuant to the Provincial Court Order. Following an investigation in which E-Fish-Ent was unable to provide the Director with daily time records or payroll records showing cash payments for wages, the Director found, on the records available, that E-fish-Ent was in violation of the Act, and ordered payment of outstanding wages.

ARGUMENT

Although Mr. Mooney did not dispute the hours Brock worked, and conceded that he had insufficient evidence to contest the award, he argued that the Director was without jurisdiction to make the Order, as the complaint was made in respect of wages arising prior to the coming into force of the new Employment Standards Act on November 1, 1995.

It was Mr. Mooney's position that the claim against the company was settled prior to the new Act coming into force, and that the Judge did not have the power to make the Order he did. Consequently, he argued that the Determination should be cancelled as it was without proper foundation.

Mr. Omstead, on behalf of the Director, argued that the investigation was undertaken pursuant to a Court Order, whether or not the judge had the jurisdiction to issue the Order he did. In any event, Mr. Omstead argued that as the first complaint was not investigated as the parties had indicated to him that the dispute had been settled, no Determination had been made. He contended that new Act did not prohibit a filing of a second complaint, and that there was nothing in the Act preventing the investigation of two complaints.

ANALYSIS

After a consideration of the evidence, and the submissions of the parties, I am unable to find that the Determination is incorrect. Mr. Mooney conceded he did not have any evidence to support his contention that wages had been paid.

I am also unable to find that I have the jurisdiction under the Act to set aside the Determination on jurisdictional grounds. The investigation and subsequent Determination was done pursuant to an Order of the Provincial Court, over which adjudicators under the Act have no jurisdiction. The Appellant's remedy is an appeal of that Order.

Consequently, the appeal is denied.

ORDER

I Order, pursuant to Section 115 of the *Act*, Determination No. 003267 be confirmed.

Carol. Roberts
Adjudicator
Employment Standards Tribunal