

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act, R.S.B.C. 1996, C. 113

- By -

Timothy Eremondi
("Eremondi" or the "Employee")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Ib S. Petersen
FILE NO.:	98/629
HEARING DATE:	December 23, 1998
DATE OF DECISION:	February 10, 1999

DECISION

SUBMISSIONS

Mr. P.J. Payne on behalf of the Employer

Mr. Timothy Eremondi on behalf of himself

FACTS AND ANALYSIS

This is an appeal by the Employee pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on September 9, 1998 which determined that Tessler Fabcare Inc. ("Tessler" or the "Employer") did not owe Eremondi any money on account of incentive payments under his contract of employment.

Eremondi was employed by Tessler between July 18, 1996 and June 27, 1997. It is not in dispute that there was an agreement between Eremondi and the Employer dated January 15, 1997--set out in his employment evaluation form--that he was entitled to incentive payments of "1% of cumulative company wide sales increase--1996 over 1997".

The only issue in dispute between the parties is whether the Employer, in calculating the incentive payments owing to Eremondi, is entitled to take into account the 1996 sales of an Alberta business purchased in 1997. Eremondi says the total sales of the Alberta business should be considered a sales increase for the Employer. In other words, in determining the amount he is entitled to, the Employer cannot take into account the 1996 sales of the Alberta business. Eremondi argues that he contributed to sales in Alberta. The Employer agrees and explains that Eremondi was compensated for the sales in Alberta, 1996 over 1997, *i.e.*, the increase. Based on the evidence before me, I am of the view that the parties contemplated an arrangement whereby Eremondi would be compensated for sales increases 1996 over 1997. This necessarily takes into account 1996 sales of the Alberta business.

Eremondi, as the appellant, has the burden to prove the determination wrong. In my view, he has not done so. In the result, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the Act, I confirm the Determination in this matter..

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal