

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 -

Dione Marie Madock
("Madock")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman
FILE NO.: 95/020
HEARING DATE.: April 9, 1996
DATE OF DECISION: April 12, 1996

DECISION

APPEARANCES

Dione Madock	the Appellant
Jason Antoniak	Witness for the Appellant
Lynne Egan	Delegate of the Director of Employment Standards

OVERVIEW

This is an appeal by Dione Marie Madock (“Madock”) pursuant to Section 112 of the Employment Standards Act (“the Act”) against Determination No. CDET #000600 issued by the Director of Employment Standards (the “Director”) on December 29, 1995. In this appeal Madock claims she is owed overtime wages by Miracan Enterprises Ltd. (“Miracan”).

FACTS

Madock was employed as a telemarketer by Miracan from May 11, 1995 to August 15, 1995. Her rate of pay was \$8.00 per hour.

On October 2, 1995, Madock filed a complaint with the Employment Standards Branch claiming Miracan owed her approximately 145 hours of overtime calculated at \$580.00. On the complaint form she indicated she did not have a record of hours worked at Miracan.

On December 29, 1995, the Director issued a Determination indicating that no wages were owed to Madock by Miracan. The Reason Schedule attached to the Determination contains the following statements:

Ms. Madock files a complaint alleging that while in the employ of the company she worked a total of approximately 145 hours of overtime for which she was not paid at overtime rates. The investigating officer asked the employer to provide payroll records including the daily records of the complainant. The payroll records were sent and they confirmed the period of employment was May 11, 1995 to August 15, 1995. However, the company was only able to locate daily records for the period of June 28, 1995 to August 10, 1995. The employee was asked to provide records of the hours she worked each day. Ms. Madock did not have any record of the hours she worked. An adjustment was made based on the records provided and the employer was asked to issue a cheque in the amount of \$62.40. The cheque was

sent to the employee who is unhappy with the adjustment and wishes to appeal the decision to close her file.

ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Madock is owed any further wages by Miracan.

ARGUMENTS

Madock claims she is owed \$517.60 by Miracan. This represents 129.4 hours of overtime accumulated during the period May 11, 1995 to June 27, 1995.

Madock has no record of her daily hours of work. There are no pay stubs. She testified that when she was employed at Miracan she entered her hours on a daily basis into a book, but now she cannot locate this book. She recollects she was owed a total of 145 hours at the time she ceased working. After deducting the \$62.40 or 15.6 hours she received from Miracan via the Employment Standards Branch, she calculates she is still owed 129.4 hours of overtime.

To support her claim, Madock stated that phone records would confirm that she started work early and stayed late while employed at Miracan.

In further support, Jason Antoniak ("Antoniak") testified that he brought Madock to work each day at 8 a.m., commencing about two weeks after she started the job, and she stayed at the office all day until he picked her up at 7 or 8 p.m. He also stated that Madock told him she had asked her manager about getting paid for the overtime she worked and the manager told her to shut up and quit if she didn't like things.

Lynne Egan ("Egan"), the investigating officer who handled Madock's complaint, stated that given neither Madock nor Miracan had daily records for the period prior to June 28, 1995, there was insufficient evidence to support Madock's claim for additional wages. She stated that John Flanagan, President of Miracan, told her that his business had closed and the only records of daily hours that he could find for Madock were for the period June 28, 1995 to her last day of work. These records indicated Madock was owed some overtime wages and Miracan paid the amount of \$62.40 as calculated by Egan.

Madock is of the view that Miracan's records for the period prior to June 28, 1995 are missing because they prove she worked long hours.

Although duly notified of the hearing, Miracan did not attend the hearing, nor did it provide any submissions on this appeal.

The payroll documents provided by Miracan to Egan consist of daily time records for the period June 28, 1995 to August 10, 1995 and a payroll summary. The daily time records indicate Madock normally worked Monday through to Friday from 4 to 10 hours per day. Madock

testified these records were accurate. The payroll summary indicates the total amount of wages paid to Madock on a semi-monthly basis with no indication of hours worked in each period. Madock testified that the amounts listed on this summary were the amounts she received from Miracan.

ANALYSIS

After considering all the evidence, I conclude that Madock is not owed any further wages by Miracan.

I cannot determine the actual hours worked by Madock during the period prior to June 28, 1995. There are no daily records to support Madock's claim. I cannot rely on Madock's recollection that she was owed 145 hours of overtime. She indicates on her complaint form that this amount is an approximation. Furthermore, the evidence provided by Antoniak is inconsistent with Madock's evidence regarding her hours of work after June 27, 1995. He claims he left her at work for 11 to 12 hours per day, yet she confirmed she worked days ranging from 4 to 10 hours during the period June 28, 1995 to August 10, 1995. Finally, phone records (which were not submitted by Madock) might indicate that certain calls were placed at certain times, but they will not indicate Madock made the calls, nor confirm her precise total hours of work on a specific day.

Without knowing the actual hours worked by Madock, I cannot determine what, if any, overtime was worked by her during the period prior to June 28, 1995.

In view of the above, I am unable to conclude that further wages are owed to Madock by Miracan.

ORDER

Pursuant to Section 115 of the Act, I order that Determination No. CDET #000600 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

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