

**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 -

United Maritime Suppliers Inc.  
("United Maritime")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 98/006

**DATE OF DECISION:** February 13, 1998

**DECISION**

**OVERVIEW**

This is an appeal by United Maritime Suppliers Inc. (“United Maritime”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued by a delegate of the Director of Employment Standards on December 9, 1997.

The Director’s delegate determined that United Maritime owed wages in the amount of \$10,018.11 (plus interest) to a former employee, Shahrukh Petigara, on account of his entitlement to overtime wages under Section 40 of the *Act*.

United Maritime’s appeal is based on a “belief” that the claim for overtime wages arises from inaccurate records which were prepared by Shahrukh Petigara. However, United Maritime did not keep and, therefore, does not have hours of work records which refute Mr. Petigara’s claim.

This appeal was decided by way of written submissions.

**ISSUE TO BE DECIDED**

Is Shahrukh Petigara entitled to be paid overtime wages by United Maritime as set out in the Determination dated December 9, 1997?

**ANALYSIS**

Section 28 of the *Act* requires an employer to keep records pertaining to each employee’s date of employment and hours of work, etc. It is clear from the Determination and the parties’ submissions that despite the absence of United Maritime’s records, the Director’s delegate found that wages were owed to Shahrukh Petigara. These wages remain unpaid. United Maritime’s reasons for appeal do not dispute that it did not provide any records to the Director’s delegate during her investigation of the employee’s complaints.

Section 114(1)(c) of the *Act* allows the Tribunal to dismiss an appeal if it is “...frivolous, vexatious or trivial or is not brought in good faith.” Black’s Law Dictionary (6th edition) defines “frivolous” as:

A pleading (which) is clearly insufficient on its face and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purpose of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.

Similarly, a frivolous appeal is defined as “...one in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed.”

It is trite law that an appellant, United Maritime in this appeal, bears the onus of proving its case. To have some prospect of meeting that onus United Maritime must submit some evidence or argument which challenges the material point in the Determination. When I review the Determination, United Maritime’s appeal and the parties’ submissions, I find that this appeal is devoid of merit because United Maritime has not made any submission nor given any evidence to challenge or controvert the findings made by the Director’s delegate in the Determination. I also find that United Maritime has not challenged the rationale set out in the Determination. For all of these reasons I dismiss the appeal under Section 114 of the *Act* as I find that it is a frivolous appeal.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination be confirmed.

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**Geoffrey Crampton**  
**Chair**