

An appeal

- by -

McMillan Video Ltd. operating as Reel Time Video

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**TRIBUNAL MEMBER:** John M. Orr

**FILE No.:** 2004A/14

**DATE OF DECISION:** April 21, 2004

## DECISION

### SUBMISSIONS

Pam Brady	On behalf of McMillan Video Ltd.
Lorelei Edwards	On her own behalf
Pat Douglas	Delegate on behalf of the Director

### OVERVIEW

This is an appeal by McMillan Video Ltd. (“the Employer”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) from a Determination dated December 22, 2003 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

Lorelei Edwards (“Edwards”) was employed by McMillan Video Ltd. (“the Employer”) and filed a complaint alleging that the Employer had failed to pay wages as required by the *Act*. The Director’s delegate investigated the matter and in the course of that investigation held a *viva voce* hearing. The Employer failed to attend the hearing despite adequate actual notice. Following that process the delegate determined that the Employer was in breach of the *Act* and owed Edwards the sum of \$59.54 in wages. The Director then imposed three administrative penalties of \$500.00 each. Thus the total amount found owing was \$1,559.54.

The Employer has appealed alleging that evidence has become available that was not available at the time the Determination was being made. No submission is made appealing the administrative penalties

### ISSUE

The issue in this case is whether the appellant has raised issues that amount to errors in law or breaches of natural justice that would persuade the Tribunal to vary the Determination.

### ANALYSIS

I am not satisfied that there is any new evidence to be admitted. The Employer firstly raises an issue about the failure of Edwards to return some rented videos. This is irrelevant to the issue of the payment of wages.

The Employer then addresses the late payment of wages but there is nothing in the submission that was not available at the time of the investigation or that could not have been submitted to the Director. There is no explanation as to why this could not have been presented, at least in this form, at an earlier time. The

Employer complains about the finding of unpaid overtime solely on the grounds that Edwards did not discuss it with the Employer. This is not a defence to failure to pay appropriate wages.

An appeal to the Tribunal is not a re-investigation of the complaint or an opportunity to re-argue the case. In this case the delegate conducted an investigation and conducted an oral hearing in which the parties had a full and fair opportunity to present evidence and make submissions. The Employer failed to take advantage of that opportunity and failed to attend the hearing. There was ample evidentiary foundation for the findings of fact made by the delegate and the delegate gave reasonable reasons for his findings. The Tribunal will not substitute its findings of fact for that of the Director without some substantial reason to do so. In this case the delegate's findings were based on a thorough investigation, sworn evidence and a reasonable analysis of the evidence.

In conclusion, I am not persuaded that there is any new evidence to be considered or that the Director's delegate erred in law or failed to observe the principles of natural justice in making the Determination. Accordingly, the Determination is confirmed.

## **ORDER**

I order, under section 115 of the *Act*, that the Determination herein dated December 22, 2003 is confirmed.

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**John M. Orr**  
**Member**  
**Employment Standards Tribunal**