

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 -

Herb Frost operating as Herb Frost Autobody
("Frost")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 96/780

DATE OF DECISION: February 18, 1997

DECISION

OVERVIEW

This is an appeal by Herb Frost operating as Herb Frost Autobody (“Frost”), under Section 112 of the *Employment Standards Act* (“Act”), against Determination No. CDET 004861 which was issued by a delegate of the Director of Employment Standards on December 3, 1996. Frost alleges that he does not owe wages to Kerry D. Nickerson (“Nickerson”) because “...if Nickerson did some work for me while I was in the hospital, I am unaware of it.”

ISSUE(S) TO BE DECIDED

Does Frost owe wages to Nickerson as set out in the Determination?

FACTS

The facts on which the Director’s delegate relied to make his finding are set out clearly in the Reason Schedule which is attached to the Determination. Before concluding that Nickerson did perform autobody work for Frost, the delegate sets out his reasons and analysis clearly.

None of the surrounding facts or findings are contested in Frost’s appeal.

The Determination shows that Frost owes Nickerson wages in the amount of \$452.92, plus interest, for the following reasons:

On a balance of probabilities it is concluded that the complainant did work for the employer as an autobody repairman/employee. Since the employer did not keep any records, the complainant’s hours as recorded on his calendar are unrefuted evidence of his hours of work. Since the employer denies any work or wage rate, the rate of pay reverts to the minimum standard allowed by the *Employment Standards Act* (see former *Employment Standards Regulation* Section 3(1)). The employer owes regular wages (see Section 1 “regular wage”), overtime wages (see Section 40(1)) and vacation pay (see Section 58(1)) in accordance with the *Employment Standards Act*.

ANALYSIS

The Reason Schedule shows that Nickerson was employed by Frost from July 19, 1995 to August 3, 1995 - before Frost was hospitalized in August, 1995.

Frost's appeal does not challenge this, or any other findings which are set out in the Determination.

ORDER

I order, under Section 115 of the "Act", that Determination No. CDET 004861 be confirmed.

Geoffrey Crampton
Adjudicator
Employment Standards Tribunal