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 -

Creative Oak & Pine (N. Van.) Ltd.
("Creative Oak" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 1999/740

DATE OF DECISION: February 18, 2000

DECISION

OVERVIEW

This is an appeal filed by Bruce Phillips, presumably on behalf of Creative Oak & Pine (N. Van.) Ltd. ("Creative Oak" or the "employer"), pursuant to section 112 of the *Employment Standards Act* (the "*Act*") from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on November 10th, 1999 under file number ER 086971 (the "Determination"). I understand that Mr. Phillips is a principal of Creative Oak.

By way of the Determination, the Director's delegate awarded Daniel C. Madigan ("Madigan"), a former furniture sales representative employed by Creative Oak, the sum of $2,549.94 on account of unpaid overtime wages, concomitant vacation pay, recovery of an unauthorized payroll deduction and interest. The delegate dismissed Madigan's claim as it related to unpaid commission earnings and Madigan did not appeal that aspect of the Determination.

THE APPEAL

The *only* substantive document submitted by the employer in support of its appeal is a one-page handwritten note entitled "Reasons For This Appeal" which was appended to the appellant's standard-form notice of appeal filed with the Tribunal on December 3rd, 1999.

Upon receipt of the appellant's notice of appeal and appended "Reasons", the Tribunal's Acting Chair wrote to all interested parties (including the appellant), on December 6th, 1999, and requested that they forward written submissions setting out their respective submissions and all supporting documents. The Acting Chair's December 6th letter specifically states that the appeal may be decided solely on the basis of the parties' written submissions and that "an oral hearing may not be held". The parties' respective submissions and documents were to be delivered to the Tribunal on or before 4:00 P.M. on December 24th, 1999. Although Madigan filed an extensive written submission (with supporting documents), neither the Director nor the employer chose to do so. The Director's position, as set out in her delegate's letter to the Tribunal dated December 7th, 1999 was that "the Determination...stands on its own merits". Madigan's submission, in turn, was forwarded to the other parties on January 4th, 2000 with a request that any replies be delivered by no later than January 18th--neither the employer nor the Director filed a reply submission.

Thus, as matters now stand, there is absolutely no *evidence* (as compared to mere unsupported allegations) before me upon which I could reasonably conclude that the Determination is incorrect. The appellant's entire "Reasons For This Appeal" are reproduced below:

"Reasons For This Appeal

1. Error in the findings of fact.

2. Settlement is not fair or equitable considering past employment history and verbal aggreements (sic) made with Dan Madigan.

3. • Overpayment of commissions

• The fact that Dan Madigan re: verbal aggreement (sic) worked for straight time--Do you pay a (sic) overly fair wage and commission and still pay overtime.

• Dan Madigan purchased goods at cost with the aggreement (sic) he would pay, he hasn't. Now I'm told this is a small claims issue.

4. Seeking a fair and equitable settlement.

Dec. 02/99
Bruce Phillips [signature]"

FACTS AND ANALYSIS

I have previously observed that the employer has not, despite being specifically directed to do so on two separate occasions, provided any *evidence* to support its position that the Determination be cancelled. In my view, the present appeal discloses no valid basis for interfering with the Determination thus could be dismissed under section 114(1)(c) of the *Act*--see *e.g., Lowden,* B.C.E.S.T. Decision No. 023/97; *Deveraux,* B.C.E.S.T. Decision No. 272/97; *Rein,* B.C.E.S.T. Decision No. 561/97. However, and in any event, even if one accepted the (wholly unsupported) allegations contained in the appellant's "Reasons" for appeal at face value, this appeal, in my view, is nonetheless entirely devoid of merit.

As noted in the Determination, Madigan worked as a Creative Oak sales representative from June 26th to November 6th, 1998; he was paid a $12 hourly wage plus a commission on sales.

Madigan quit and the employer withheld $532.38 from his final paycheque on account of an alleged unpaid furniture invoice. Madigan denies his liability. Whether or not Madigan does or does not owe Creative Oak the monies in question is irrelevant. Sections 21 and 22 of the *Act* authorize only certain specified payroll deductions and this particular deduction does not fall within any of the permissible categories. For the reasons set out in the Determination, which I adopt, the employer was not entitled to withhold the sum of $532.38 from Madigan's final paycheque. *If* (and I make no finding whatsoever in this regard) the employer does have a valid claim against Madigan regarding furniture that has been delivered but not paid for, the employer must pursue that matter in the Small Claims Court.

As for the monies awarded to Madigan by the delegate on account of unpaid overtime, again, the *Act* is crystal clear--employees cannot lawfully agree to work overtime hours at "straight-time" rates; such an agreement is void by reason of section 4 of the *Act.*

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **$2,549.94** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal