

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 -

Fleetwood Coffee House Inc.
operating Esquire Cappuccino Bar
(the "Esquire")

Of a Determination issued by

THE DIRECTOR OF EMPLOYMENT STANDARDS
(the "Director")

ADJUDICATOR: Jerry W. Brown

DATE OF DECISION: May 1, 1996

FILE NO: 96/093

DECISION

OVERVIEW

This is an appeal by Fleetwood Coffee House Inc. operating Esquire Cappuccino Bar ("Esquire"), pursuant to Section 112 of the *Employment Standards Act* (the "*Act*"), from Determination #CDET 000662 issued by the Director of Employment Standards (the "Director") on January 5, 1996. The Director determined that Esquire owed Christopher R. Perozak ("Perozak") \$104.00, that sum being the amount determined as non-payment of wages for the hours worked by Perozak in June of 1995 for Esquire.

FACTS

Perozak worked four shifts for Esquire for which he was to be paid a minimum wage of \$6.50 per hour. Esquire acknowledges that it has not paid Perozak for any of the work he performed for them.

ISSUE TO BE DECIDED

1. Whether Esquire can refuse to pay Perozak for work performed.

ARGUMENTS

Esquire acknowledges that Perozak performed the work but claims that there were shortfalls in cash and it is not obliged to pay Perozak for the work because of these alleged shortfalls.

Perozak claims that the wages are owed for work performed for Esquire.

ANALYSIS

The *Act* is quite clear that an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose. One of the purposes of

this section is to prevent an employer from requiring employees to contribute towards the cost of the employer's business.

The cost of doing business must not be borne by the employees.

While Esquire may feel it has cause to withhold wages, it does not. Documents filed by Esquire indicate that it has received advice on how to proceed to recover the alleged shortfalls in the cash if it deems that this is appropriate. It is not appropriate to try to effect recovery of allegedly missing money by refusing to pay an employee.

The *Act* requires a minimum of 4 hours daily. The minimum wage applicable when Perozak was working for Esquire was \$6.50 per hour.

Based on the above, I am in agreement with the Director's delegate that Esquire is required to pay Perozak wages for the period worked at the Cappuccino Bar.

I do note that vacation pay has not been calculated as part of the wages owed. The amount owed should be \$108.16.

ORDER

In summary, I order under Section 115 of the *Act*, that Determination #CDET 000662 be varied to reflect the increase for the vacation pay owed.

“Jerry Brown”

Jerry W. Brown

Adjudicator

Employment Standards Tribunal

EKB:96292