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 -

Lori Robertson-Homer ("Homer" or the "Employee")

- of a Determination issued by -

The Director of Employment Standards (the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 98/715

DATE OF HEARING: February 26, 1999

DATE OF DECISION: March 5, 1999

APPEARANCES

Ms. Judith Doulis on behalf of Parry Charters Ltd. (Parry Charters)

Ms. Robertson-Homer on behalf of herself

DECISION

This is an appeal by the Employee pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on October 23, 1998 which determined that West Wind Charters Ltd. was liable for regular wages, vacation pay and statutory holiday pay to Homer in the amount of \$365.99.

Prior to the hearing, Parry Charters agreed, and the delegate accepted, that it was the proper party to the Determination. There was no challenge to that at the hearing. In the result, I will allow the Determination to be amended to reflect the proper party.

The Tribunal held a hearing on February 26, 1999. The parties made opening statements. Homer explained that the only issue before me was whether she was entitled to unpaid wages for some 323 hours she claimed to have worked for Parry Charters between February 10 and May 10, 1997. In a nutshell, Parry Charters' position was that Homer was not an employee at the material time, rather she was an employee of a company operated by her and her husband, Homer Enterprises Inc., and, in the alternative, if she was an employee, she did not work the hours claimed.

Following opening statements, Homer called her husband, David Homer, to give evidence. After cross examination of David Homer by counsel for Parry Charters, Homer withdrew her appeal. I understood that she and her husband were reluctant to permit counsel for Parry Charters to question the background and financial details of the arrangement between Homer, Homer Enterprises Inc. and Parry Charters. Homer indicated that she was not pleased with the questions. She felt that her status as an employee was self-evident. The Employer did not agree with that.

In any event, Homer first indicated that she wished to withdraw the appeal conditionally. I understood from comments made by her husband that "conditionally" meant that Homer might pursue the issues before me "at a different level". I indicated I did not accept a "conditional" withdrawal of her appeal, and that withdrawing the appeal could adversely impact on her ability to pursue the issues before the Tribunal at reconsideration or in the

courts. Counsel for Parry Charters put Homer on notice that the principle of *res judicata* might apply if Homer sought to pursue the issues before the Tribunal or elsewhere at a later date. Homer, nevertheless, maintained that she wished to withdraw her appeal.

In the result, I dismiss the appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated October 23, 1998 be confirmed, naming Parry Charters as the proper respondent, in the amount of \$365.99 together with such interest as may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Ib Skov Petersen Adjudicator Employment Standards Tribunal