

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 -

Global Inking Systems Ltd. and Global Inking Systems (Poland) Ltd
("Global")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 98/001

DATE OF HEARING: March 3, 1998

DATE OF DECISION: March 12, 1998

DECISION

APPEARANCES

James Stuart	for Global Inking Systems Ltd. and Global Inking Systems (Poland) Ltd.
Regina Cybulska	for Global Inking Systems Ltd. and Global Inking Systems (Poland) Ltd
No appearance	on behalf of Daniel Draganski
No appearance	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal brought by Global Inking Systems Ltd. and Global Inking Systems (Poland) Ltd. (“Global”) 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’s delegate”) on December 12, 1997.

The Director’s delegate determined that Global owed its former employee, Daniel Draganski (“Draganski”) the sum of \$955.13 on account of unpaid wages.

The appeal was heard at the Tribunal’s offices on March 3, 1998 at which time I heard evidence and submissions from James Stuart (“Stuart) and Regina Cybulska (“Cybulska”) on behalf of Global. The latter is the President and the former is the Secretary-Treasurer of Global.

Although properly notified, Draganski failed to attend the hearing or otherwise contact the Tribunal to explain his absence. The Director’s delegate also did not attend the hearing.

FACTS

Draganski was employed as a sales representative from May 20, 1997 to June 26, 1997. On or about June 16, 1997 he was asked to sign a non-disclosure agreement drawn up by his employer. He refused to sign the agreement and on June 26, 1997 his employment was terminated. Draganski was advised in a letter dated July 2, 1997 that he would not receive his last paycheque due to his refusal to sign the non-disclosure agreement. The amount withheld amounts to \$955.13 including interest.

On December 12, 1997 the Director’s delegate issued a Determination in the amount of \$955.13. The delegate concluded that the amount withheld by Global was a violation of Section 18 of the *Act* which provides that an employer must pay all wages owing to an employee within 48 hours after the employer dismisses the employee.

Global appealed the Determination on December 31, 1997. In the reasons for appeal Stuart, on behalf of Global, said that he paid \$2000.00 to Draganski on April 3, 1997 as an advance against future earned income and, therefore, Draganski was overpaid \$1044.87 which is the difference between what he should have been paid as per the Determination and what he was paid by way of an advance. Stuart attached a copy of a cheque dated April 3, 1997 in the amount of \$2000.00 made payable to Draganski. Stuart also stated that the Director's delegate was advised of this advance by way of a phone call and memo dated December 12, 1997.

In reply the Director's delegate stated that the Determination was issued before he received Stuart's December 12, 1997 letter and the advance was not previously raised during his investigation despite written and verbal requests for information. The delegate provided a copy of a letter he sent to Global dated August 26, 1997 in which he outlines Draganski's complaint and requests a reply. He also provided a copy of Stuart's December 12, 1997 letter which confirms it was faxed to him on December 12, 1997 at 10:44 a.m.

In a subsequent submission and at the hearing Stuart reiterated that the \$2000.00 cheque was brought to the delegate's attention via a phone call and a memo dated December 12, 1997. At the hearing he entered his FIDO telephone bill dated December 16, 1997 which indicates a call was made to the delegate's office on December 10, 1997. Stuart testified that he phoned the delegate on December 10, 1997 and got his voice mail which said he was on vacation. Stuart said he left a message saying Draganski had received a \$2000.00 advance and he would send him a copy of the cheque.

Stuart also testified that Revenue Canada has just completed a review of Global's payroll and has determined that the \$2000.00 advance paid to Draganski is earned income. A payroll document and a supplementary 1996 T4A issued to Draganski were entered to support this claim.

Cybulska's evidence at the hearing was consistent with that provided by Stuart.

ISSUE

The sole issue before the Tribunal is whether Draganski is owed any wages by Global?

ANALYSIS

The burden is on the Appellant, Global, to demonstrate an error or a basis for the Tribunal to vary or cancel this Determination.

First, I am not satisfied that this is a case where the employer is seeking to provide new information to the Tribunal which was not provided to the Director's delegate during the course of the investigation. I accept Stuart's uncontradicted evidence that he provided

information about the advance to the delegate prior to the issuance of the Determination. Furthermore, there is no dispute that this information was received by the delegate on the same day he issued the Determination.

Second, I have considered the evidence of Stuart and Cybulska regarding the advance and I am persuaded that Draganski was paid the advance and as a result he is not owed any wages by Global. Although Draganski could have attended before me to give evidence on this issue he chose not to do so. Nor did he make any written submissions on this appeal. Stuart's position on the advance has remained consistent, it is unchallenged and it is supported by payroll and tax documents and the evidence of Cybulska. Accordingly, I am satisfied that Global has met the burden in this appeal and has shown that the Determination should be cancelled.

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination dated December 12, 1997 be cancelled.

Norma Edelman
Adjudicator
Employment Standards Tribunal

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