

**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 -

Sin Wah Leung, et al.  
(the “Complainants”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Mark Thompson

**FILE NO.:** 97/848

**DATE OF DECISION:** March 29, 1998

**DECISION**

**OVERVIEW**

This is an appeal by Sin Wah Leung, King Keung Szeto, Kin Bong Leung, Jin Chang Lin, Jason Tse, Xue Hua Yeung, Ai Ling Mai, Ma Zhong Li, Mei Li Li, Me Ai Li, A Gioi Quang and Sue Quong (the “Complainants”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination (the “Determination”) issued by the Director of Employment Standards (the “Director”) on October 28, 1997. The Determination found that Global Garment Factory (“Global”) had violated Sections 18, 40, 44 and 58 of the *Act* by failing to pay wages, overtime wages, statutory holiday pay and vacation pay. The Director’s Delegate presented evidence of these violations to Global, for the period after March 26, 1995. Global provided cheques for the amounts due to the Complainants with the condition that they sign releases before accepting the cheques. The Complainants refused to accept the cheques under that condition on the grounds that additional wages were owing to them. The Director’s Delegate issued the Determination, which accepted the payments by Global, to permit the Complainants to launch an appeal of the audit conclusion.

**ISSUE TO BE DECIDED**

The issue to be decided in this case is whether the Complainants should receive payment for wages and benefits prior to March 26, 1995.

**FACTS**

The Complainants were employed by Global for various periods of time, generally ending around December, 1995 or January, 1996. The Complainants were paid on a piece rate basis. In April and May of 1996, they filed complaints alleging violations of the *Act*. The Director’s Delegate issued a request for records to Global for the period January, 1994 through January, 1996. Global provided records for the period after March 26, 1995. The Director’s Delegate found that the present owners had acquired the business on that date and accepted that Global was unable to provide records prior to the date of acquisition.

The Director’s Delegate audited Global’s payroll records and found that it owed wages to the Complainants. The Complainants did not provide any records of their hours worked prior to March 26, 1995 to the Director’s Delegate.

In support of their appeal, the Complainants provided copies of pay stubs for the Complainants for periods in 1994 and 1995, depending on the employment history of the individual Complainants. The original pay stubs did not show hours worked in the pay

period or daily or weekly hours. Each cheque contained the notation “piecework.” Subsequently, handwritten notations were added to the stubs, with the number of hours worked during the pay period and a calculation of an amount due apparently based on the minimum wage of prevailing at the time. The appeal referred to the calculations on the pay records, but did not indicate the basis for the statement of hours worked.

In reply to the appeal, the Director’s Delegate stated that the pay records provided in support of the appeal were the same documents the Employment Standards Branch had used in making the Determination.

**ANALYSIS**

Section 28(1) of the *Act* requires an employer to keep records that include the hours worked by an employee on each day, regardless of the basis on which wages are paid. Clearly, Global did not comply with that provision prior to the acquisition of the company by its present owners. When employers fail to provide records of hours worked, the Director frequently relies on records kept by employees of the time they worked. See *511773 B.C. Ltd.* (BC EST #D541/97). In this case, however, no evidence of hours worked each day or week during the period between January 1994 and March 1995 was provided. Calculations were attached to the pay stubs stating that a number of hours were worked during the pay period, but this information is insufficient to support a conclusion that a specific number of hours were worked in a particular day or during a week. Employee records of time worked (on which the Director and the Tribunal have relied) generally have been created at the time when the work was done. The information on the number of hours worked appear to have been added to the pay stubs after the fact, apparently more than two years after the work in question was performed.

While it is possible that the Complaints were denied their rights under the *Act*, they have not provided sufficient evidence to justify that the Determination be varied.

**ORDER**

For these reasons, the Determination of October 28, 1997 is confirmed.

**Mark Thompson**  
**Adjudicator**  
**Employment Standards Tribunal**