

**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 -

Canadian Oil Filter Recovery (1995) Corporation  
("COFR")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 97/093

**DATE OF DECISION:** April 8th, 1997

## DECISION

### OVERVIEW

This is an appeal brought by Canadian Oil Filter Recovery (1995) Corporation (“COFR”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of Determination No. CDET 005024 issued by the Director of Employment Standards (the “Director”) on January 20, 1997. The Director determined that COFR owed wages to Tom Barber (“Barber”), Vern Friesen (“Friesen”), and Russell McDowell (“McDowell”).

COFR challenges the Director’s conclusion.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Barber, Friesen and McDowell are owed wages by COFR.

### FACTS

On January 20, 1997, the Director issued a Determination against COFR in the amount of \$5090.27. The Director concluded that Barber was owed overtime wages. In making this conclusion, the Director relied on records provided by Barber as COFR indicated it had no records. The Director further concluded that Friesen and McDowell were owed compensation for length of service. COFR’s argument that Friesen was not entitled to compensation because he worked less than three months was rejected by the Director on the basis that pursuant to Section 97 of the *Act*, Friesen was continuously employed for just over one year and, as a result, he was owed 2 weeks compensation. Regarding McDowell, the Director found that COFR did not establish just cause for the dismissal and therefore he was owed 3 weeks compensation given his length of service.

COFR appealed the Director’s Determination on February 12, 1997. In its reasons for the appeal COFR stated:

*Tom Barber:*

- 1. The directors have not been kept astride of the proceedings that were placed before the corporation and as a result they have not been able to properly place their case.*

2. *Mr. Barber did not hand in time sheets during his employment. Since he was on salary he worked, we expected, normal hours. It was not until he was terminated that the issue of hours was raised. This gives the impression that Mr. Barber used the Labour Standards to settle a personal issue of bitterness.*
3. *Since Mr. Barber did not hand in time slips on a regular, or any basis, it really leaves the employer set up to be a victim of anyone's temperament.*
4. *We should have the opportunity to review and audit Mr. Barber's alleged overtime.*

*Vern Friesen:*

1. *The employee did not satisfactorily complete his employment duties.*

*Russell McDowell:*

1. *The employer requires an opportunity to research prior lay off records.*

The Director submitted the following reply on February 21, 1997 to COFR's appeal:

- The corporation was aware of the complaints and made its position known prior to the issuance of the Determination. Copies of correspondence dated August and September 1996 between COFR and the Director were submitted.
- COFR's argument that Barber did not hand in time sheets during his employment does not waive the employer's responsibilities under the Act and in the absence of accurate and reliable records being maintained by the employer, Barber's records were relied on.
- COFR's new argument that Friesen did not satisfactorily complete his duties does not establish just cause for dismissal.

On February 27, 1997, COFR, along with Barber, Friesen and McDowell, were invited to reply to the Director's submission. No replies were received by the Tribunal.

## **ANALYSIS**

The onus is on the appellant to show that wages are not owed to Barber, Friesen and McDowell. I find on the evidence before me that this onus has not been discharged.

There is no evidence to support COFR's claim that it was not able to make its case respecting Barber. COFR was aware, as early as August 1996, of Barber's complaint regarding overtime. There is an onus on the employer to keep and maintain accurate records of hours worked for each employee. COFR had ample opportunity to provide information to the Director and the Tribunal to show that overtime was not owed based on

its records. However, it has not done so. Given COFR has provided no substantive information to refute the Director's calculations, I see no reason to alter the Director's decision as to the amount owed Barber.

Regarding Friesen, the reason raised by COFR for his dismissal does not amount to just cause. Just cause for termination exists when an employer can show that the employee's conduct amounts to a fundamental breach of the employment contract. Alternatively, just cause may exist when an employee continues to perform his/her duties in an unsatisfactory manner despite a warning that his/her employment is in jeopardy. After considering the evidence before me, I agree with the Director that COFR did not have just cause to terminate the employment of Friesen. I further agree that 2 weeks compensation is owed Friesen as COFR brought forward no evidence to dispute the Director's finding that Friesen was continuously employed for just over one year.

Finally, COFR has provided no evidence to refute the Director's conclusion regarding McDowell. There is nothing in COFR's appeal which leads me to conclude the Director erred in finding that McDowell was owed 3 weeks compensation for length of service.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET005024 be confirmed.

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**Norma Edelman**  
**Adjudicator**  
**Employment Standards Tribunal**