

**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 -

Gabriel Russo, Operating as Hair World  
("Russo")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	Cindy J. Lombard
<b>FILE NO.:</b>	1998/822
<b>DATE OF HEARING:</b>	December 3, 1998
<b>DATE OF DECISION:</b>	April 20, 1999

DECISION

**APPEARANCES**

For the Appellant the Appellant appeared on his own behalf

For Christine CARRUTHERS  
and Helene GRANT appeared on their own behalf by teleconference

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Gabriel Russo operating as Hair World (“Russo”) of a Determination of a Delegate of the Director of Employment Standards (the “Director”) dated December 3, 1998.

The Determination was issued following a complaint by the former employees of Russo, Christine Carruthers (“Carruthers”) and Helene Grant (“Grant”) that they were not paid for hours that they were available for work and are consequently owed wages under the *Act*.

Russo asserted that he paid Carruthers and Grant for the hours worked. After investigating the complaint, the Director issued a Determination that Russo owed Carruthers \$1,003.33 plus interest and Grant \$731.91 plus interest.

**ISSUE TO BE DECIDED**

Russo’s appeal is based on the assertion that Carruthers and Grant are not owed any money.

**FACTS AND ANALYSIS**

Carruthers was employed as a hairdresser by Russo from July 2, 1997, to December 3, 1997. Carruthers was paid four hours plus commission from July 2, 1997, to October, 1997, and six hours plus commission from October to December 3, 1997. Grant was employed from October 17, 1997, to February 12, 1998, and paid four hours per day plus commissions from October 17, 1997, to February 12, 1998. The hourly rate was minimum wage.

The evidence of Carruthers and Grant is that at Russo’s request they were present and available for work at the hairdressing salon shop five days per week, namely, four week days from 9:00 a.m. to 5:00 p.m. and on Saturdays from 9:00 a.m. to 3:00. During the time of the shop, their evidence is that they rarely took a lunch break and if they were eating, they would stop eating

and do the cut. They never left the shop premises except occasionally on their noon hours to run errands. The Determination of the Director includes one hour per day for a lunch break.

In the case of Grant, Russo said that she should not have been paid for November 11th because she had not yet been employed for thirty days (Section 34 of the *Act*) in order to be entitled to be paid for that statutory day. Grant agrees with this assertion. This means that from Grant's award the daily pay of \$49.00 (i.e. 7 hours at \$7.00 per hour) should be deducted or a net amount of \$682.91.

Section 34 of the *Act* provides that if an employee reports for work, the employee is entitled to be paid for the entire period she is required to be at the work place. Specifically Section 34 provides as follows:

- (1) If an employee reports for work on any day as required by an employer, the employer must pay the employee for
  - (a) at least the minimum hours for which the employee is entitled to be paid under this section, or
  - (b) if longer, the entire period the employee is required to be at the workplace.
  
- (2) An employee is entitled to be paid for a minimum of
  - (a) 4 hours at the regular wage, if the employee starts work, unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions, or
  - (b) 2 hours at the regular wage, in any other case unless the employee is unfit to work or fails to comply with the Industrial Health and Safety Regulation of the Workers' Compensation Board.
  
- (3) Despite subsection (2)(a), a school student reporting from work on a school day is entitled to be paid for a minimum of 2 hours at the regular wage in the circumstances described in that subsection.

It is clear from the evidence of Carruthers and Grant that they were in fact required to be present at the Hair World Salon for seven hours per day week days and five hours on Saturdays as previously outlined.

The onus is on the employer to show that the Determination is incorrect and with the exception of the deduction of Grant's pay for the November 11th statutory holiday, the employer, Russo, has failed to meet his evidentiary burden.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination with respect to Carruthers be confirmed as issued in the amount of \$1,057.01 together with whatever further interest that may have accrued pursuant to Section 88 of the *Act* since the date of its issue.

Pursuant to Section 115 of the *Act*, I order that the Determination with respect to Grant be varied and issued in the amount of \$688.91 together with interest that has accrued pursuant to Section 88 of the *Act*.

**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**