

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Scott Ricker Operating CSR Distribution Services
("CSR.")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	John McConchie
FILE NO.:	96/196
DATE OF DECISION:	August 16, 1996

DECISION

OVERVIEW

This is an appeal by Scott Ricker Operating CSR Distribution Services (“CSR.”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 001316 issued by the Director of the Employment Standards Branch (the “Director”) and dated February 26, 1996. The Determination found that CSR had contravened Section 17 (1) of the Employment Standards Act by failing to pay wages within the specified time period. The Determination required CSR to pay the sum of \$520.32 to the complainant Richard Spooner, who had left CSR’s service in early October, 1995.

CSR has appealed the Determination alleging that the complainant supplied “incorrect information” to the Employment Standards Officer, Mr. Mackie. CSR requests a “re-evaluation of the claim”.

FACTS

The complainant worked for CSR for a period of time (the evidence is not clear) delivering newspapers. His service came to an end in the early part of October, 1995. The parties disagree on the proper characterization to be given to the termination of the complainant’s employment but it is immaterial to the issue in this appeal.

CSR wrote to the complainant on October 12, 1995 advising him that his final cheque would be ready on October 19th and requiring the return of certain company materials in the complainant’s possession as a pre-condition to releasing the cheque. Subsequently, the Board’s officer, Mr. Mackie contacted Scott Ricker, CSR’s principal, and arranged a meeting to facilitate an exchange of the materials in the possession of the complainant for the cheque ostensibly in the possession of CSR.

Mr. Ricker did not attend the meeting but phoned to advise that his car had broken down. Mr. Mackie’s subsequent efforts to reinstate the meeting were to no effect as CSR did not return phone calls. The Determination was subsequently issued for contravention of Section 17 (1) of the *Act*.

On March 20, 1996 CSR appealed. In its reasons for appeal, CSR said:

“Incorrect information was supplied by the comp. The complainant neglected to inform Mr. Mackie that he had been overpaid from June 1995 through to the date he quit without notice. A re-evaluation of the claim is due and requested.”

In his reply dated April 15, 1996 the complainant submitted that the overpayment was in the amount of \$80.00 and had been forgiven by CSR.

On April 30, 1996 CSR wrote to the Tribunal advising that it wished to make a written response in the appeal. It requested and received an extension of time to May 10, 1996 to file the response. There were subsequent opportunities for the appellant to provide information when the Tribunal disclosed certain documentation to CSR which it had received from the complainant. However, no written response has been received by the Tribunal from CSR.

ISSUES TO BE DECIDED

The issue in this appeal is what wages, if any, are owed to the complainant.

ANALYSIS

Section 17 (1) of the *Act* requires an employer to pay to an employee all wages earned by the employee in a pay period "at least semi-monthly and within eight (8) days after the end of the pay period."

CSR has not disputed that wages are owing to the complainant but has disputed the amount set out in the Determination. However, that – lodging the appeal -- is essentially all CSR has done.

In her letter to CSR dated April 9, 1996 the Registrar of the Tribunal provided CSR with the opportunity to make further submissions in response to information and documentation received from the Director of Employment Standards. In the letter, the Registrar advised CSR that its submission "should detail the facts in issue and your position on the matter. Included should be all records and documents in support of your position."

CSR has chosen not to make any further submissions or to file any payroll or other documents in support of its allegation of an overpayment. It has not replied to the complainant's assertions about the amount of the alleged overpayment and that CSR forgave repayment.

CSR has not met the burden of proof required of an appellant under Section 112 of the *Act*. It has not persuaded me that the Determination issued by the Director should be varied.

The appeal is dismissed.

ORDER

Pursuant to Section 115, I order that Determination Number CDET 001316 be confirmed.

John McConchie
Adjudicator
Employment Standards Tribunal

JLM:jel