

**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 -

Ingrid Voigt  
operating as Ives Restaurant, Gifts, Motel  
("Ives")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton  
**FILE NO.:** 1999/061  
**DATE OF HEARING:** April 13, 1999  
**DATE OF DECISION:** April 27, 1999



**FACTS AND ANALYSIS**

There is no dispute about the fact that David Olson was employed by Ives as a cook from June 15, 1997 to June 15, 1998. The agreement between Ives and HRDC contains a term which established Mr. Olson’s wage rate at \$8.00 per hour. In its appeal, Ives submitted that Mr. Olson had agreed to a wage of \$1,000.00 per month. However, at the hearing Ingrid Voigt withdrew from that position and acknowledged that his wage entitlement under the *Act* should be based on a wage rate of \$8.00 per hour. Mr. Olson’s hours of work and the amount of wages to which he is entitled remain an issue for me to decide.

The Record of Employment (“ROE”) which was issued by Ives on June 21, 1998 shows Mr. Olson’s total insurable earnings as \$14,560.00 (i.e. 1820 hours @ \$8.00) and shows code “K” (other) as the reason for issuing the ROE. Code “K” is explained as follows: “Business cash shortage. Owner unable to keep employees.” However, Ingrid Voigt testified that Mr. Olson did not work 40 hours per week. Rather, she testified, he worked approximately 35 hours per week. She acknowledged she had no records of his hours of work. She also acknowledged candidly that she would have paid Mr. Olson the amount of wages to which she believed he is entitled, if she had the financial resources to do so.

Mr. Olson’s Statement of Remuneration Paid (T4 form) for 1997 shows \$6,720.00 as employment income. There is no 1998 T4 form in evidence and the Employer’s records are, to say the least, incomplete.

Ms. Voigt submits that Mr. Olson received a total of \$10,190.70 in cash and payments in kind during his employment at follows:

12 months rent subsidy	\$4,800.00
12 months utility subsidy	\$1,500.00
Cash advances	\$3,777.00
1 box of shrimp for personal consumption	<u>\$ 113.00</u>
	\$10,190.70

In addition, Ms. Voigt submits (without any supporting documentary evidence) that she remitted to Revenue Canada on behalf of Mr. Olson income tax deductions (\$1,514.80), CPP contributions (\$271.04) and EI premiums (\$396.48) which were not deducted from Mr. Olson’s earnings. The accuracy and reliability of these amounts were challenged vigorously by Ms. McKay on behalf of Mr. Olson. I find that I cannot rely on Ms. Voigt’s submissions on this point. Mr. Olson acknowledges receiving approximately \$4,000.00 in cash as wages (approximately \$300.00 per month plus \$400 as “severance pay”).

The Director determined that Mr. Olson is entitled to wages under the *Act* as follows:

Wages earned (June 15, 1997 – June 15, 1998)	\$17,536.00
plus: 4% vacation pay	<u>\$ 701.44</u>
subtotal	\$18,237.44
less: wages paid	<u>\$ 8,800.00</u>
subtotal	\$ 9,437.44
plus: Interest accrued to January 15, 1999	<u>\$ 376.72</u>
	\$ 9,814.16

The amount of wages earned (\$17,536.00) was calculated on the basis of Mr. Olson working 40 hours each week, including those weeks in which there was a statutory holiday. At the hearing, Mr. Olson acknowledged that he did not work “...the long week-end in August, 1997.” By that, I understand him to mean British Columbia Day weekend (August 2, 3, and 4, 1997). He concurred with the Director’s findings that he did not work on Christmas Day (1997) and New Year’s Day (1998). He also acknowledged that he worked “...split-shifts during Raft Race Days” (May 30/31, 1998) rather than his normal 8-hour shift. Ms. Voigt testified that Mr. Olson did not work Good Friday or Easter Sunday in 1998. Mr. Olson did not rebut that testimony. In his direct evidence, Mr. Olson testified that he worked more than 8 hours on certain days if another employee did not begin working as scheduled or if one of Ms. Voigt’s business trips to Cranbrook took longer than expected. In the absence of reliable records, the Director determined that Mr. Olson worked 8 hours per day.

The amount of wages paid to Mr. Olson (\$8,800) was determined by the Director to be as follows:

12 months wages of \$300 per month	\$3,600.00
12 months cabin subsidy at \$400 per month	\$1,500.00
\$300.00 US paid on termination (equivalent to \$400 CDN)	<u>\$ 400.00</u>
	\$8,800.00

Neither Ms. Voigt nor Mr. Olson raised in their submissions the provisions of Section 20 of the *Act*. However, I am required to address those provisions if I am to render a fair decision and one which is consistent with the purposes of the *Act* (see: Section 2). Section 20 of the *Act* reads:

**How wages are paid**

20. An employer must pay all wages
  - (a) in Canadian currency,
  - (b) by cheque, draft or money order, payable on demand, drawn on a savings institution, or
  - (c) by deposit to the credit of an employee's account in a savings institution, if authorized by the

(d) employee in writing or by a collective agreement.

I note also that Section 21 of the *Act* prohibits an employer from withholding an employee's wages except as permitted by statute:

### **Deductions**

21. (1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.

In a certain set of limited circumstances an employer is permitted to withhold wages by honouring "...an employee's written assignment of wages." (See: Section 22(4) of the *Act*):

### **Assignments**

22. (1) An employer must honour an employee's written assignment of wages ...
- (4) An employer may honour an employee's written assignment of wages to meet a credit obligation.

Thus, Section 22 (4) of the *Act* would be the only possible means by which Ives could claim authority to withhold a portion of Mr. Olson's wages and apply those monies to his rent. But, there is no written assignment to authorize that and, therefore, it is not permitted under the *Act*. Taken together, Section 20 and 22(4) of the *Act* lead me to find that the Director erred in determining that \$4,800 in "cabin subsidy" formed part of the wages which had been paid to Mr. Olson during his period of employment with Ives. In *Director of Employment Standards* (BC EST #D447/98; Reconsideration of BC EST #D527/97 and BC EST #D528/97), the Tribunal confirmed that in the absence of a written assignment of wages, or a written contract of employment which could be construed as such an assignment, the kind of deductions which were taken from Mr. Olson's wages are prohibited by the *Act*. I have no doubt that Mr. Olson received the benefit of living in the cabin and was required to pay rent to his employer. However, for purposes of the *Act* and for the reasons given above, the amounts of rent payable by Mr. Olson cannot be considered to be "wages" paid.

With respect to the amount of rent to be paid for his accommodation, Mr. Olson testified that an amount of \$400.00 per month was discussed ("I got the same rate of rent as Roz had") but Ms. Voigt never discussed an additional payment of \$125.00 per month for power (electricity and propane). He agreed that during the Winter(1996/1997), Ms. Voigt had suggested he move to "The Cozy Quilt" as it would be warmer there, but that was not a viable alternative as he did not have a driver's license nor any means of transport. Ms. Voigt testified that she told Mr. Olson that he would have to pay for power on two occasions: during the winter of

1996/1997 and in February, 1998 when the heat source for his cabin was changed from propane to electricity. Mr. Olson described \$125.00 per month heating cost as “totally unreasonable” and “ludicrous”. He currently lives at “The Cozy Quilt” where he pays \$350.00 per month including utilities. I find, on the balance of probabilities, that the Director did not err in determining the value of the “cabin subsidy” (i.e. the monthly rental amount) at \$400.00 per month. However, for the reasons given above, that amount cannot be withheld for the wages payable to Mr. Olson. I would expect that Mr. Olson and Ms. Voigt will arrive at some mutually satisfactory arrangement for satisfying their competing claims for payment of wages and rent. As I advised the parties during the hearing, my authority is limited to that given to me under that *Act*. I have no authority to decide disputes between a landlord and a tenant.

As the appellant, Ives bears the onus of establishing, on the balance of probabilities, that the Director erred in making the Determination. There is nothing in Ives’ submissions or in the evidence before me which would support a finding that the Director erred in determining that Mr. Olson’s wage rate was \$8.00 per hour during his entire period of employment from June 1997 to June 15, 1998. However, I find that the Director erred in determining that Mr. Olson had worked 8 hours on: August 2, 3, and 4, 1997; Good Friday (April 10, 1998); Easter Sunday (April 12, 1998); and May30, 1998. That error resulted entirely from the incomplete information given to the Director by the parties during his investigation.

Based on the evidence and submissions put before me at the hearing, I find that the Determination must be varied as follows:

Total Wages Earned (per Determination)	\$17,536.00
Less:	
August 2, 1997	8 hours @ \$8.00 = \$64.00
August 3, 1997	8 hours @ \$8.00 = \$64.00
August 4, 1997	8 hours @ \$12.00 = \$96.00
April 10, 1998	8 hours @ \$12.00 = \$96.00
April 12, 1998	8 hours @ \$8.00 = \$64.00
May 30, 1998	4 hours @ \$8.00 = \$32.00
May 31, 1998	4 hours @ \$8.00 = <u>\$32.00</u>
	<u>\$448.00</u>
Revised Total Wages Earned	\$17,088.00
Plus vacation pay: 4% of \$17,088.00	<u>\$683.52</u>
	\$17,771.52
Less Wages paid	<u>\$3,994.52</u>
Amount of wage entitlement under the <i>Act</i>	\$13,994.52

**ORDER**

I order, under Section 115 of the *Act* that the Determination be varied to show the amount of \$13,994.52 plus accrued interest as Mr. Olson's wage entitlement under the *Act*.

---

**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC/bls