

**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 -

Eileen Carroll Operating as Cynatec  
("Cynatec")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Niki Buchan

**FILE NO.:** 96/792

**DATE OF HEARING:** April 18, 1997

**DATE OF DECISION:** May 3, 1997

**DECISION**

**APPEARANCES**

Eileen Carroll	for Cynatec
Robert Lusier	for Himself
Kim Carroll	Observer

**OVERVIEW**

This is an appeal by Eileen Carroll Operating as Cynatec (“Cynatec”) of Letter Determination dated December 13, 1996 pursuant to Section 112 of the *Employment Standards Act* (the “Act”). The Determination concludes that Cynatec owes Robert Lusier (“Lusier”) wages and interest in the amount of \$ 570.31.

Cynatec argues that Lusier was hired as an agent and was to be paid a commission of 20% on gross sales only.

Lusier claims that he was to be paid a commiission of 20% of gross sales; but regardless the amount of sales, he is entitled to the minimum wage for all hours worked.

**ISSUE TO BE DECIDED**

Whether Lusier is entitled to the minimum wage for all hours worked?

**FACTS**

1. Lusier was hired by Cynatec on June 7, 1996 as an agent to be paid a commission of 20% of gross sales.
2. Lusier terminated his employment with Cynatec on July 14, 1996.
3. Cynatec paid Lusier a total of \$ 800.00 as an advance on commissions during this employment period.
4. Lusier did not sell any product or services during this period of employment although he did make an effort to do so.
5. Cynatec did not keep time records because it had hired Lusier on a commission basis not on an hourly rate.

**ANALYSIS**

The purpose of the *Act* is to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment. Lusier fits within the definition of an employee under the *Act* in that he is a person the employer allowed directly or indirectly, to perform work normally done by an employee. Also, a commissioned salesman is not one of the exclusions from hours of work requirements set out in Section 34 of the Regulations. The requirements of the *Act* or the *Regulations* are minimum requirements and an agreement to wave those requirements is of no effect. In this case there was no intended violation of the *Act*, Ms. Carroll was unaware that the requirements of Sections 16, 17 and 18 are applicable to this situation.

*Section 16:* “An employer must pay an employee at least the minimum wage as prescribed in the regulations.”

*Section 17(1):* “At least semimonthly and within 8 days after the end of the pay period, an employer must pay to an employee all wages earned by the employee in a pay period.”

*Section 18(2):* “An employer must pay all wages owing to an employee within 6 days after the employee terminates the employment.”

The delegate of the Director of Employment Standards accepted time records submitted by Lusier as those that he worked since Ms. Carroll had not kept records. He deducted 1/2 hour per day from all days worked as an unpaid lunch break. Since there was no hourly rate agreement he determined that Lusier is entitled to the minimum wage of \$ 7.00 per hour as his regular wage. He deducted the \$800.00 advance paid and calculated the required 4% annual vacation pay to reach a total amount owing.

I confirm that the Determination is a reasonable one founded on the requirements of the *Act*.

**ORDER**

In summary, I order under Section 115 of the *Act*, the Letter Determination dated December 13, 1996 be confirmed.

**Niki Buchan**  
**Adjudicator**  
**Employment Standards Tribunal**