

**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 -

New Pacific Nissan Ltd.  
("New Pacific")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 98/122

**DATE OF DECISION:** April 28, 1998

**DECISION**

**OVERVIEW**

This is an appeal by New Pacific Nissan Ltd. (“New Pacific”), under Section 112 of the *Employment Standards Act* (the “*Act*”), against a Determination which was issued by a delegate of the Director of Employment Standards on February 10, 1998. The Determination requires New Pacific to pay \$2,649.57 to a former employee, Clarence Coish, as a result of unpaid wages, annual vacation pay and interest.

Coish was employed by New Pacific as a commissioned salesperson from September 1, 1995 to April 30, 1996. During his employment, Coish purchased a used vehicle from New Pacific and executed an agreement which authorized New Pacific to make deductions from his wages as a part of a loan repayment schedule. He received a monthly “car allowance” which was reported on his Earnings Statements.

The Director’s delegate investigated Coish’s complaint under the *Act* and made the following findings as a result of that investigation:

- New Pacific contravened Section 16 of the *Act* (Minimum Wage) and Section 40 of the *Act* (Overtime Wages) during the months of November, 1995 and January, March and April, 1996.
- Statutory Holiday Pay was not paid as a required by Part 5 of the *Act*.

In summary, the Director’s delegate determined that Coish was entitled to the following amount of wages:

Regular Wages earned	\$13,566.68
Less: wages paid	11,180.65
Annual vacation pay (4% of \$13,566.68)	542.67
Less: deductions (as per written authorization)	<u>511.72</u>
	\$2,416.98
Interest to February 10, 1998	232.59
<b>Total Amount owed</b>	<b><u>\$2,649.57</u></b>

New Pacific’s appeal is based in the ground that the Director’s delegate did not take into account the payment of a monthly car allowance to Coish when calculating the amount of “wages” paid to him each month. These car allowance payments were \$150.00 (November, 1995) and \$250.00 per month (December, 1995 to March, 1996).

**ISSUE TO BE DECIDED**

Should the Determination be varied to reflect the amounts paid by New Pacific to Coish in the form of “car allowances”?

**ANALYSIS**

“Wages”, as defined in Section 1 of the *Act*, include:

- (a) salaries, commissions or money, paid or payable by an employer to an employee for work ...

but does not include

- (h) allowances or expenses

That is, the *Act* expressly excludes any amounts paid as allowances or expenses from the definition of “wages”. Thus, I find that the Director’s delegate interpreted the *Act* correctly when she did not include any amounts paid to Coish as a “car allowance” in determining his entitlement to “wages” under the *Act*. I also agree that the so-called bonus payment made to Coish in December, 1995 was nothing more than a repayment of monies which properly belonged to him but which had been withheld by New Pacific from his earnings in previous months.

For all these reasons I find that New Pacific has not established any ground on which I should vary the Determination.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination dated February 10, 1998 be confirmed.

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

GC:sr