

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-

Eero Kalevi Innala

(“Innala”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/97

DATE OF DECISION: May 6, 1998

DECISION

OVERVIEW

This is an appeal brought by Eero Kalevi Innala (“Innala”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by the Director of Employment Standards (the “Director”) on February 9th, 1998 under file number 086-626 (the “Determination”).

The Director dismissed Innala’s complaint, in which he claimed Christensen Bros. Logging Ltd. owed him unpaid overtime wages, on the basis that his claim had been resolved on or about November 24th, 1997. At that time, the employer agreed to pay Innala the sum of \$287.50 and a further \$200 to the appellant’s son. On November 24th, 1997, the appellant signed a form headed “Receipt of Payment and Termination of Complaint” in which he acknowledged receipt of the settlement monies. The form also stated, in part:

“I understand that the investigation into my complaint is complete and that no further action will be taken on my behalf under the British Columbia Employment Standards Act.”

ISSUE TO BE DECIDED

The settlement of Innala’s complaint represented the settlement of a disputed claim; the employer alleged (and this position appears to have been accepted by the Director) that Innala was not entitled to claim *any* overtime pay by reason of section 34(1)(i) of the *Employment Standards Regulation*. Innala now says that, in his view, the claim for overtime pay was not excluded by regulation.

ANALYSIS

I am satisfied that the settlement of Innala's claim constituted a settlement of a claim that was seriously disputed by the employer. There also appears to have been substantial merit to the employer’s position. Simply put, Innala wishes to resile from a settlement of a disputed claim because he now believes he compromised his legal position.

Innala was under no legal or other compulsion to agree to the settlement and, in my view, did not enter into the settlement on the basis of any negligent or fraudulent misrepresentation as to the merits of his claim. Indeed, there is a very good argument to be made that the settlement reflects a payment to the appellant over and above that to which he was legally entitled [by reason of section 34(1)(i) of the *Employment Standards Regulation*].

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal