

**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 -

Robert Wood operating The Whistler Waterproofing Company  
(“Wood”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 96/075

**DATE OF DECISION:** July 22,1996.

**DECISION**

**OVERVIEW**

This is an appeal by Robert Wood operating The Whistler Waterproofing Company (“Wood”), under Section 112 of the *Employment Standards Act*(the “Act”), against Determination No. CDET 000612 which was issued by a delegate of the Director of Employment Standards. The Determination shows that Wood owes wages to Keith Klips (“Klips”) totalling \$ 118.00 plus interest.

Wood claims that no wages are owed to Klips.

I have reviewed the written submission which Wood made to the Tribunal as well as the information provided by the Director’s delegate.

**ISSUE TO BE DECIDED**

The issue to be decided is the amount of wages, if any, which Wood owes to Klips.

**FACTS**

Klips was employed by Wood from April,1995 to June,1995. His wage rate was \$14.50 per hour.

The Determination shows the following amount, plus interest, as owing to Klips:

unpaid wages( 4 hours x \$14.50 )	58.00
deduction for cash advance	<u>60.00</u>
Total	\$118.00

The reason for issuing the Determination is stated in the following terms:

The employer has failed to provide any documentation or information to refute the employee’s claim. Therefore the determination is issued based on the employee’s record of hours worked.

The basis for Klips’ complaint was that he claimed he was not paid for 4 hours work on June 30, 1995. He acknowledges that he received cash advances totalling \$60.00 from Woods( \$40.00 on June 7 and 20.00 on June 14 ). Klips relies on daily hours of work records which he kept in a personal diary.

Wood's written submission denies any wages are owed to Klips, and states as follows:

“ I had his hours, his vacation pay and his overtime that he claimed I owed him and paid him in full without complaint...

I deducted \$120.00 that I had given him out of my own pocket as a cash advance”.

Wood provided semi-monthly earnings records for Klips ( including the period June 16 to 30, 1995 ) but did not provide daily hours of work records. Wood's records for June 16 to 30, 1995 show the following:

Regular earnings (60 hours)	\$ 870.00
Overtime (9.5 hours)	<u>\$ 188.49</u>
sub-total	\$1,058.49
4% vacation pay	<u>\$ 42.33</u>
Total (gross)	\$1,100.82

From this amount, Wood deducted \$120.00 ( re: cash advance ) and the usual statutory deductions.

Klips' record of his daily hours of work for the period June 16 to 30, 1995 show that he worked a total of 69.5 hours ( including 4 hours on June 30, 1995).

### ANALYSIS

There is no difference between Klips' records and Wood's records concerning the total number of hours worked by Klips in the pay period June 16 to 30, 1995.

Klips' records provide the following result:

Regular wage:	64.0 hours	X	14.50/hour	=	\$928.00
Overtime wage	5.0 hours	X	21.75/hour	=	\$108.75
	0.5 hours	X	29.00/hour	=	<u>\$14.50</u>
			sub-total		\$1,051.25
4% vacation pay					<u>\$42.05</u>
			total		\$1,093.30

Klips acknowledges in his complaint that he received cash advances totalling \$60.00 from Wood. Wood deducted \$120.00 from Klips' final pay to offset cash advances allegedly paid to Klips. However, Wood has no records to support his claim that he paid cash advances totalling \$120.00.

Section 17(1) of the *Act* requires an employer to pay wages at least semi-monthly. Section 20(a) of the *Act* allows wages to be paid in cash. Thus, Wood did not contravene the Act

by paying certain wages to Klips in cash and accounting for those cash payments (advances) in the semi-monthly statement of earnings.

In the absence of any records to show that Wood paid Klips \$120.00, I accept Klips' statement that he received \$60.00 in cash advances. Thus, the amount owed by Wood to Klips is \$ 52.48 (\$ 60.00 - \$ 7.52), representing the undocumented cash advance and the difference between \$1,100.82 and \$1,093.30.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that the Determination be varied to show that the total amount owed by Wood to Klips be shown as \$52.48.

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

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