

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-

“NR” Nails Royale Ltd.

(“NR” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 99/152

DATE OF HEARING: May 17th, 1999

DATE OF DECISION: June 2, 1999

DECISION

APPEARANCES

Deborah Baker	for “NR” Nails Royale Ltd.
Charlene Keats	on her own behalf
No appearance	for the Director of Employment Standards

OVERVIEW

This is an appeal brought by “NR” Nails Royale Ltd. (“NR” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on February 10th, 1999 under file number 80255 (the “Determination”).

The Director’s delegate determined that NR owed its former employee, Charlene Keats (“Keats”), the sum of \$3,510.74 on account of unpaid wages and interest.

The employer’s appeal was heard at the Tribunal’s offices in Vancouver on May 17th, 1999 at which time I heard evidence and submissions from Deborah Baker, an NR officer and director, and from NR’s receptionist and “payroll clerk”, Ms. Cindy Harvey, on behalf of the employer. Ms. Keats appeared on her own behalf.

TIMELINESS OF THE APPEAL

By reason of section 112 of the *Act*, this appeal should have been filed by no later than March 5th, 1999; in fact, NR’s appeal was not filed until March 16th, 1999. I heard the employer’s evidence and argument in support of its application for an extension of the appeal period [see section 109(1)(b)] but did not rule on the application at the hearing. I reserved on the extension request and then proceeded to hear the appeal on its merits.

The request for a time extension is refused. Ms. Baker maintains that she was unable to file a timely appeal due to some health problems relating to both her and her daughter--I have no corroborating medical evidence before me with respect to either person.

It would appear that the employer only deigned to file an appeal when the Director took enforcement proceedings with respect to the Determination. Ms. Baker testified that she only obtained the requisite appeal form after the Director had “frozen my account”. As noted in the Determination, the employer essentially refused to cooperate in the delegate’s investigation and did not produce any payroll records to the delegate despite a demand for production having been issued (see section 85). The employer, similarly, has not produced any original payroll records to the Tribunal other than copies of payroll cheque stubs--documents, I might add, that do not satisfy

the requirements of section 27 of the *Act*. It appears that this appeal was filed only because the employer mistakenly believed that filing an appeal would forestall any further execution proceedings that might otherwise have been taken by the Director.

Having heard the appeal on its merits, I must also observe that even if I was inclined to grant a time extension, the appeal would have failed in any event. The employer admits that Ms. Keats is owed some \$600 in unpaid wages but disputes the much larger figure awarded by the delegate. However, in support of its appeal, the employer has produced no evidence to show that Keats was in fact paid minimum daily pay, vacation pay and statutory holiday pay--the basis for the issuance of the Determination.

Keats was paid a 50% commission on all fees she generated as a "nail technician" with NR. The employer did not produce--or apparently even maintain--payroll records showing daily hours worked, payment of vacation pay and statutory holiday pay. The employer says that Ms. Keats did not work all of the hours she claimed to have worked but has not produced any records corroborating that assertion. The only records the employer apparently has in its possession are cheque stubs evidencing payment of commission earnings. The employer asserts that Ms. Keats was entitled to her 50% commission and nothing more. The employer's "payroll clerk" professed total ignorance regarding an employer's obligations under the *Act* to pay minimum daily pay (see section 34), an employer's obligation to pay at least the minimum wage (see section 16) and an employer's obligation to pay vacation pay (see section 58).

ORDER

The employer's request for an extension of the appeal period is refused. Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$3,510.74** together with whatever further interest that may have accrued, in accordance with section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal