

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*

-by-

Frederick A. August

(“August”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** File No. 96/387

**DATE OF DECISION:** August 22, 1996

## **DECISION**

### **OVERVIEW**

This is an appeal brought by Frederick A. August (“August”) pursuant to section 112 of the Employment Standards Act (the “Act”) from Determination No. CDET 002554 issued by the Director of Employment Standards (the “Director”) on June 10, 1996. The Director determined that Coast Wholesale Appliances Ltd. (the “Employer”) had fully discharged its obligation to August under section 18(1) of the Act (payment of wages on termination).

### **FACTS**

According to the information provided by August, he commenced his employment with the Employer in May 1992; he was terminated on January 2, 1996. Pursuant to section 63 of the Act, the Employer was obliged to pay three weeks’ wages in lieu of notice. The employer negotiated a settlement with August whereby August would be paid three weeks’ wages plus an additional ten weeks’ wages for a complete severance package totalling the sum of \$9,379.00. A release, dated January 5, 1996 was signed by August. The Release clearly states that it constitutes a full and final settlement of any and all claims that August may have otherwise had against the Employer. The settlement funds were paid by way of a direct payment of \$5,000 to an R.R.S.P.; the balance (less appropriate statutory deductions) was paid directly to August.

August now says that he is entitled to be paid, at most, an additional \$750 representing unpaid wages (either as a bonus, commission or commission override) that were earned during the month of July 1994.

### **ANALYSIS**

Even if I assume that August has not been paid the monies he says he earned in July 1994, I am nonetheless of the view that his complaint was properly dismissed by the Director.

First, pursuant to section 63 of the Act, the Employer was only obliged to pay three weeks’ wages to August by way of severance pay. The amount that August claims

is well below the additional severance pay (that is, the additional ten weeks' severance pay) that the employer paid to August as part of the settlement agreement.

Second, the Tribunal will not look behind *bona fide* settlement agreements unless it can be affirmatively shown that the settlement falls below the minimum statutory liability of the employer under the Act (see s. 4). August has executed a full and final release and, therefore, is not legally entitled to claim additional compensation unless it can be said that the total settlement, in this case \$9,379, falls short of what the employer was obliged to pay to August *under the Act*. It is clear, based on the record before me, that the monies paid by the Employer to August exceeded the employer's minimum statutory obligation even if the July 1994 wage claim is accepted at face value.

### **ORDER**

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 002554 be confirmed.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**