

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 -

Herbert Nikal
("Nikal")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	Hans Suhr
FILE No.:	97/243
DATE OF DECISION:	June 12, 1997

DECISION

OVERVIEW

This is an appeal by Herbert Nikal (“Nikal”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 19, 1997. Nikal alleges that the delegate of the Director erred in determining the wage rate for the disputed period to be \$8.50 per hour and further erred in determining that the cancelled cheques were payment for wages. Nikal contends that the wage rate was \$12.00 per hour and further contends that the amounts reflected by the cancelled cheques were not wages but in fact merely repayment of monies lent by Nikal to the employer, Gail Lindstrom operating Eagle Eye Contracting (“Eagle Eye”). Nikal seeks as a remedy, \$1,236.00 in the form of wages owed. The Director’s delegate concluded that there were no wages owing to Nikal.

ISSUES TO BE DECIDED

The issues to be decided in this appeal are:

1. What was the hourly rate of pay ?
2. Is Nikal owed wages ?

FACTS

Nikal was employed by Eagle Eye as a “flag man” from April 4, 1995 to May 5, 1995.

Payroll records provided by Eagle Eye indicate that Nikal worked a total of 103.5 hours during his period of employment.

Cheques made payable to and endorsed by Nikal were issued in the following amounts:

Date of cheque	Amount of cheque
March 7, 1995	\$250.00
March 10, 1995 ***	\$300.00
April 24, 1995 ***	\$100.00
May 10, 1995	\$350.00
June 3, 1995 ***	\$4,000.00

***The cheques issued on March 10, April 24 and June 3, 1995, were not only made payable to and endorsed by Nikal, they were signed by Nikal as well.

ANALYSIS

Nikal has not provided any evidence to support his contention that the rate of pay was \$12.00 per hour nor has Nikal provided any evidence to show that the monies received from Eagle Eye were not wages.

Nikal is obliged to provide some evidentiary basis for his appeal of the Determination, therefore, in the absence of any evidence from Nikal, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination be confirmed.

Hans Suhr
Adjudicator
Employment Standards Tribunal