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-

Clay Signs (1997) Ltd.
("Clay Signs" or the "employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/172

DATE OF DECISION: June 18, 1998

DECISION

OVERVIEW

This is an appeal brought by Clay Signs (1997) Ltd. ("Clay Signs" or the "employer") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) from Determination No. CDET 007569 issued by the Director of Employment Standards (the "Director") on February 20th, 1998 (the "Determination").

The Director's delegate determined that Clay Signs owed its former employee, Dennis A. Blake ("Blake" or the "employee"), $630.35 on account of unpaid wages, compensation for the employer's violation of section 8 of the *Act* and interest (see section 88 of the *Act*).

ISSUES TO BE DECIDED

By way of a memorandum appended to the employer's appeal form, Mr. Steve Rickaby, the president of Clay Signs set out the following reasons for appeal:

> "1. The employee quit and was under no pressure to do so. The employee was re-offered his employment and refused.
>
> 2. The ruling is further invalid and biased based on inaccurate and dishonest statements made by Dennis Blake and [the Director's delegate].
>
> 3. As for the full details of our appeal, they will involve much research and compilation of data which will result in dozens if not hundreds of hours of effort from members of this company. I cannot afford to expense that time until I am assured that I am entitled to and in fact will have my appeal heard. As for physical costs, photo copies [sic] of any or our documents required by others will be charged out at 50 cents per copy. I will also be seeking financial damages for time spent defending this action.
>
> 4. Full details of our appeal will be presented at the time of the appeal."

Although in his original complaint filed September 24th, 1997, Blake claimed 1 week's wages as compensation for length of service, Blake was not awarded any monies on that aspect of his claim and thus the first ground of appeal set out above need not be addressed. I will, however, address the other issues raised by the employer's appeal.

In response to the employer's third and fourth "reasons for appeal" noted above, the Tribunal Registrar wrote to the employer on March 18th, 1998; the Registrar's letter reads, in part, as follows:

> "In your appeal, you indicate 'full details of our appeal will be presented at the time of the appeal'.
>
> The appeal commenced on March 16, 1998 when you sent your appeal to the Tribunal. I note that this was also the last day for you to submit a time ly appeal.
>
> As the appellant, it is your responsibility to file 'full details' at this time. Please provide these details by **4:00 p.m. Friday March 20, 1998.** If the above requested information is not received in our office by **4:00 p.m. March 20, 1998** we will consider this appeal abandoned."
>
> (**boldface** in original)

In response to the Tribunal Registrar's March 18th letter, the employer submitted a further 10-page written submission (albeit not until 8:45 A.M. on March 23rd)--a rather vitriolic submission that, for the most part, fails to adequately address the director's delegate's analysis of the facts and relevant legislative provisions and which contains a host of uncorroborated allegations regarding Blake's claim and the delegate's investigation of that claim. Further, much of the employer's March 23rd written submission proceeds on the entirely mistaken apprehension that, somehow, by way of the appeal process (N.B., an appeal of a determination issued in *favour* of the employee) the employer is entitled to advance a claim for compensation against one or more of Blake, the provincial government or the Tribunal.

FACTS AND ANALYSIS

The Director's delegate found that the employer, a sign making company, engaged Blake as a trainee with a particular emphasis in the area of computer-generated vinyl applications. Blake commenced his employment on June 9th and quit on September 24th, 1997. Blake was paid $100 for his first week on the job (June 9th to 13th, 1997) which was styled as a "practicum".

The Director's delegate concluded that Blake was entitled to a further $316 representing unpaid wages for the week of June 9th. There is no dispute that Blake was providing services to the employer during the week of June 9th; the employer acknowledged paying $100 as a "gift" for Blake's services during his practicum. The employer says that Blake agree to work the week of June 9th without being paid. Given the definition of an "employee" contained in section 1 of the *Act* (which includes "a person being trained by an employer for the employer's business") and

section 4 of the *Act* (which has the effect of rendering null and void any agreement by Blake to work the week of June 9th without pay), I am satisfied that the Director's delegate did not err in awarding Blake an additional $316 in wages for the week of June 9th, 1997.

The delegate also awarded Blake the sum of $52 representing wages owed to Blake by reason of section 34(2)(a) of the *Act.* The delegate's calculation of this latter amount was *based on the employer's own payroll records.* The only argument advanced by the employer with respect to this aspect of the Determination is that: "Blake only ever came in because he insisted on it, not because he was asked by his employer". The short answer to this submission is that if a employer does not schedule an employee for work, the employee need not be allowed to work when he or she attends the workplace. However, if the employee is allowed to "start work" then the employer is obliged to pay "a minimum of 4 hours at the regular wage"--that result is mandated by the statute unless the employer can show (and there is no such allegation before me) that the employee's work had to be "suspended for a reason completely beyond the employer's control, including unsuitable weather conditions". It follows that the Determination must be upheld with respect to the employee's claim under section 34(2)(a).

The final component of Blake's claim as set out in Determination concerns section 8 of the *Act* which provides that an employer must not misrepresent the particulars of a position or its accompanying wages or working conditions in order to induce a person to accept that position. The delegate found that employer misrepresented the nature of the position that was being offered to the employee. Specifically, the delegate found that the employee was hired on the understanding that he would be given training in the field of vinyl sign-making; such training was not provided to him.

Blake maintains that he never received the training that he understood he would receive. Indeed, he maintains that for the most part his duties consisted of maintenance work such as cleaning and refuelling the company's vehicles, doing general janitorial work and, at one point, painting the employer's principal's house fence. The employer, in its March 23rd written submission, agrees that Blake undertook these sorts of duties but says that such tasks were only given to him because, in order to avoid a layoff, Blake "pleaded for other opportunities" and was told "we would give him some work if we could find it". The employer's March 23rd submission continues:

> "For most of the months [Blake] was here, there was little 'sign work' to keep everyone busy. As a result, we created make work projects to keep people like Dennis from being laid off."

I consider the above statement to be, in effect, an admission by the employer that it was not able to fulfil its original representations to Blake regarding the nature of the position. I also note that Blake's training program was reduced to writing and signed by both the employer's president and

by an officer of "Training Works" which I understand to be a program sponsored by the provincial government.

This latter 4-page document, which outlines a training program to commence on June 16th, 1997, sets out a 492 hour "apprenticeship" in various aspects of sign-making. This document corroborates Blake's evidence as to the nature of the position that he was offered; equally clearly, this document does not reflect the duties that Blake actually carried out while employed by the employer. I consider the delegate's award of $249.60 for the employer's breach of section 8, a remedy issued pursuant to section 79(4) of the *Act,* to be entirely appropriate and, if anything, a conservative calculation of the employee's actual loss. The employer's appeal with respect to the section 8 award is, in my view, entirely without merit.

ORDER

Pursuant to section 115 of the *Act,* I order that Determination No. CDET 007569 be confirmed as issued in the amount of $630.35 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act,* since the date of issuance.

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