

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 -

Johnathan O. Pardo
("Pardo")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Barry Goff

FILE NO.: 96/377

DATE OF HEARING: September 17, 1996

DATE OF DECISION: September 30, 1996

DECISION

APPEARANCES

Johnathan O. Pardo	On his own behalf
Ron Richardson	Comptroller for Midway
Ed Rusk	Witness for Midway
Lynne Egan	For the Director

OVERVIEW

This is an appeal by Johnathan O. Pardo (Pardo), pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 002545 issued by a delegate of the Director of the Employment Standards Branch (the “Director”) dated June 13, 1996 wherein the Director found that Midway Mazda (“Midway”) had not contravened Section 17(1) of the *Act*.

FACTS

From May 25, 1995 to October 27, 1995, Pardo was employed as a car salesman by 321438 BC Ltd. which operated as Doug Bruce Mazda and now operates as Midway Mazda. Pardo was terminated by the employer and on December 19, 1995, filed a complaint with the Employment Standards Branch claiming that a commission of \$486.00 and a buy-in fee of \$150.00 were still owed him.

The Director's delegate Lynne Egan reviewed the employer's records and concluded that Pardo had received all monies owed him. The employer's records also showed that Pardo had received an overpayment of \$600.00. This was an accountant's error which was not discovered until sometime after Pardo's termination and was not recovered by the employer.

Pardo arrived one hour late for the hearing and reasserted his claim but provided no additional evidence in support of his appeal of the Determination.

Midway, on the other hand, provided all of its pertinent sales vouchers and payroll records for the whole of 1995 for review at the hearing. Pardo left the hearing well before its conclusion, leaving no opportunity for any of the parties to cross-examine him.

ANALYSIS

The onus is on Pardo to provide evidence in support of his appeal. He was advised of this obligation by the Panel but chose to leave the hearing prematurely. In any event, the Panel reviewed the employer's records and found they support the original Determination. The employer also established that Pardo had received an overpayment through a payroll error which was not reimbursed. On the evidence provided, I found no basis to disturb the original Determination.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 002545 be confirmed.

Barry Goff
Adjudicator
Employment Standards Tribunal

BJG:sc