

**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 -

“ELH Enterprises Ltd.”  
("ELH")

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Barry Goff

**FILE NO.:** 96/178

**DATE OF DECISION:** October 1, 1996

**DECISION**

**OVERVIEW**

This is an appeal by ELH Enterprises Ltd. ("ELH") pursuant to Section 112 of the *Employment Standards Act* (the "Act") against Determination No. CDET 001043 issued by a Delegate of the Director of Employment Standards (the "Director") on February 12, 1996. In this appeal ELH claims no wages are owing to Thomas Mansel ("Mansel").

I have completed my review of the information provided by the parties on this appeal and have decided that the determination should be confirmed.

**FACTS**

Mansel filed a complaint with the Employment Standards Branch ("ESB") for wages owing by ELH on September 15, 1995. Mansel had worked as a labourer for ELH on a project outside Vancouver from October 14 - October 30, 1995. He returned to Vancouver at the direction of the employer on the understanding that he would be returning to the project at a later date. Mansel requested the balance of his wages from ELH after being advised that no more work was available on that project. Mansel made several attempts to collect the wages owing with limited success.

The industrial relations officer, Sharon A. Charboneau after repeated phone calls to Evert Haskewich of ELH which were not returned, wrote to ELH on December 29, 1995 setting out the specifics of Mansel's complaint. The letter requested a response if ELH disagreed with the wage claim or a cheque by return mail. ELH provided by fax on June 8, 1996, photocopies of some records and cancelled cheques. One of the cheques is made out to another party named Jerry Franks for \$100 along with a note indicating this amount paid on Tom Mansel's behalf. There are no records signed by Mansel indicating his agreement with deductions on any of the records provided. The fax face sheet from ELH states that Mansel was paid in full December 22, 1995 and invites a call to Haskewich if there are any questions. Charboneau wrote back on January 18, 1996 confirming receipt of the fax and advised that Mansel had only received \$170 on December 22, 1995. Charboneau also corrected an error in her earlier calculations and set out the new amount owing by ELH to Mansel as \$1,019.00. ELH responded again by fax on January 22, 1996 with some more material and photocopies of two cheques to Mansel, the December 22nd cheque already referred to for \$170, and a cheque for \$100 dated September 6, 1995. On February 6, Determination No. CDET 001043 was issued by Wayne Mackie, a delegate of the Director.

**ISSUE TO BE DECIDED**

Is Mansel entitled to the wages set out in the Determination?

**ANALYSIS**

The appeal form filed by ELH on February 12, 1996 provides the following:

*Tom Mansel is not telling the truth about his cash advances and bills paid by ELH. ELH will be sueing [sic] for extra office time if he does not admit to the above.*

It is not clear what ELH is trying to convey in the foregoing. I do not understand the suit for extra office time. However, if ELH is saying it took deductions from Mansel for cash advances and bills it paid on his behalf it must have proof of its entitlement to make such deductions. It has not supplied that proof. The Act directs under Section 21.

- 21 (1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.
- (2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.
- (3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of a employee's gratuities, and this Act applies to the recovery of those wages.

The onus is on ELH to provide evidence in support of its appeal. The comments referred to above are the sum and substance of ELH's evidence for this appeal other than that provided prior to the determination.

My analysis is therefore restricted to the reasons provided in the determination and a review of the materials provided by ELH. Mansel's employment by ELH and the duration of his employment have not been disputed by ELH. The conclusions set out in the reasons schedule of the determination provide in part:

In regard to wages owed, the burden of proof is on the employer to provide satisfactory evidence that all earned wages have been paid. The employer has failed to meet this burden.

The best available information regarding hours worked and wages paid was received from the complainant.

I find that, on a balance of probabilities, Mr. Mansel was employed by ELH Enterprises Ltd. In the absence of any records from the employer, I have accepted Mr. Mansel's information and have determined that there are wages owed. On the basis of all the information provided, I find that the employer, ELH Enterprises Ltd. has contravened the *Employment Standards Act* as follows:

1. Section 18, in that the employer has failed to pay all wages owing within 48 hours of termination
2. Section 27, in that the complainant was not provided with the required wage statements.
3. Section 58, in that vacation pay was not paid on termination pursuant to Section 18.

Section 28 of the *Act* requires the employer to maintain proper payroll records and Section 27 of the *Act* requires the employer to provide wage statements as follows:

27. (1) On every payday, an employer must give each employee a written wage statement for the pay period stating:
  - (a) the employer's name and address,
  - (b) the hours worked by the employee,
  - (c) the employee's wage rate, whether paid hourly, on a salary basis or on a flat rate, piece rate, commission or other incentive basis,
  - (d) the employee's overtime wage rate,
  - (e) the hours worked by the employee at the overtime wage rate,
  - (f) any money, allowance or other payment the employee is entitled to,
  - (g) the amount of each deduction from the employee's wages and the purpose of each deduction,
  - (h) if the employee is paid other than by the hour or by salary, how the wages were calculated for the work the employee is paid for,
  - (i) the employee's gross and net wages, and
  - (j) how much money the employee has taken from the employee's time bank and how much remains.
- (2) If requested in writing by an employee or by a trade union representing an employee, a wage statement may be provided electronically to the employee.

The records and materials on file provided by ELH do not meet the requirements of the *Act*. As the onus remains on the employer to substantiate that all wages owed to Mansel have been paid and it has not done so, I concur with the original determination.

**ORDER**

I order pursuant to Section 115 that Determination No. CDET 001043 be confirmed.

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**Barry Goff**  
**Adjudicator**  
**Employment Standards Tribunal**

BJG:sc