

An appeal

- by -

Ashley Home Care Cleaning Centre Ltd.
("Employer" or "Ashley")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Ib S. Petersen

FILE No.: 2002/215

DATE OF DECISION: June 25, 2002

nothing magic about the .5 hour. On the facts of this case, this is the time designated by the Employer. ...

Fourth, in the circumstances of this case, where the time between jobs exceed the .5 hour, I am of the opinion that the Employees are not entitled to be paid for that time. In my view, the Employees are on their own, and not subject to the Employer's control, and can meaningfully do what they wish to do. There is nothing before me to indicate that the employees were required to be available, or on call at a location designated by the Employer.....

The Delegate takes the position that these conclusions are wrong and did not calculate amounts owed accordingly. With respect, while the Delegate may disagree with my conclusions, it is not for him to decide not to carry out the matters referred back. There was nothing, as suggested by the Delegate, unclear as to the terms of the referral back. The legislation provides for reconsideration of my decision, an option available to the Director. Until reconsidered, the decision stands.

In the circumstances, it is my decision to refer the calculations back to the Director. In the circumstances, it is preferable that a different delegate undertake to do the necessary calculations to bring this appeal to a close on an expeditious basis. From the facts of this case, however, and despite the Employer's protestations, it is clear that the employees are owed wages, though not as much as initially awarded by the Delegate. They were only paid .5 hours travel time per day plus the time spent cleaning. I note that the Employer has a responsibility to keep proper records and that much of the confusion in this case could have been avoided had that been done. Nevertheless, it would make sense for the Director to attempt to settle these complaints based on the principle set out in my original decision which, essentially, is that employees are entitled to be paid for time actually worked. Failing a settlement, the Director must carry out the referral back on the terms indicated.

ORDER

Pursuant to Section 115 of the *Act*, I order that the report dated April 11, 2002, be referred back to the Director for further investigation in accordance with this decision.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal