

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





## DECISION

## **APPEARANCES:**

Ms. Jeanette Church	on behalf of the Employer
Ms. Susan Perrault	
Mr. Rod Bianchini	on behalf of the Director

## FACTS AND ANALYSIS

This decision deals with the results of a referral back arising out of an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the "*Act*") of a Determination of the Director issued on July 19, 2001. The Determination concluded that Ms. Wendy Rondeau ("Rondeau") and Ms. Susan Perrault ("Perrault") were owed \$4,652.07 by the Employer on account wages (Sections 18(2), 40(1) and 58(3)).

A hearing was held at the Tribunal's offices on October 15 and November 8, 2001. A decision was issued on January 24, 2002, referring two calculation matters back (D044/02):

- 1. the calculation of amounts owed, if any, for time actually worked, including travel time; and
- 2. the calculation of the amount Perrault is entitled to on the basis that she is entitled to two hour's pay per week for the "extra" work done.

The Delegate issued his report on April 11, 2002. The Delegate "accepts" the second matter. He deducted, it would appear, one hour per day and added two hours per week with respect to Perrault. That does not appear to be an issue here.

With respect to the first matter, the Delegate framed the issue as follows:

"1. Does the time in excess of .5 hours between jobs draw wages as time worked?"

This issue has already been decided:

Third, and this is perhaps where the real difference is between the parties, I accept that where the time between jobs is of short duration, the Employees should be given credit for that time as if were "worked". Such time is likely to include travel time from one job to the next, getting ready for the next job, delays and other factors that invariably "sneak" into any schedule, etc. Church's own evidence was that she always scheduled .5 hours between jobs. In other words, this is at the Employer's discretion. As noted above, "[a]n employee is deemed to be at work while on call at a location designated by the employer unless the designated location is the employee's residence". The .5 hours between jobs is effectively time the Employees are "on call". Common sense indicates that there is little meaningful they can do apart from waiting for the next job to start, and I accept that they are not on their "own time". (Amounts already paid on account of the .5 travel time must be considered in this context.) I emphasize that there is, in my opinion, generally

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

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