# 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 -

Astro Guard Alarms Vancouver Ltd.

("Astro" or the "Employer")

- of a Determination issued by -

The Director of Employment Standards (the "Director")

**ADJUDICATOR:** Ib S. Petersen

**FILE No.:** 2000/312

**DATE OF DECISION:** July 18, 2000

#### **DECISION**

### **SUBMISSIONS**

Mr. Robert Gilbertson on behalf of the Employer

Mr. Dieter Nowak on behalf of himself

Mr. Jim Dunne on behalf of the Director

#### **ANALYSIS**

In my Decision in #D162/00, I referred the following back to the Director:

"Nowak did not dispute that the delegate calculated the vacation pay owed based on T-4 earnings of \$70,133.86 and that this amount included an automobile allowance. As I understood the evidence, the automobile allowance was substantial, and the Employer argues that it is improper to include this allowance in the amount on which vacation pay is calculated. I agree with the Employer. Vacation pay is based on the employee's wages, and "wages" do not include "allowances or expenses" (Section 1). In the result, and as suggested by counsel for the Director, I refer the calculation of vacation pay owed back to the Director."

In a submission to the Tribunal, the delegate states that the amount of \$70,133.86 was a recording error in the calculation portion of the Determination. The gross wages earned for the purposes of vacation pay is \$70,683.86, as recorded elsewhere in the Determination. The vacation pay owing is 4% of that amount less \$200 paid by the Employer, or \$2,627.35 as set out in the Determination.

With respect to the automobile allowance, the delegate says that the payroll records indicate a total of \$1,050.00 was paid to the Complainant, Mr. Nowak, in three separate instalments in late 1998 and early 1999. This sum has already been "deleted from the gross earnings upon which vacation pay was calculated."

The Employer takes issue with certain aspects of my original decision. I do not intend to deal with those concerns.

With respect to the issue referred back to the Director, the Employer says that the delegate has only given credit for three months of auto expenses, and not the entire duration of Mr. Nowak's employment. He says that Mr. Nowak had him "sign forms" for Revenue Canada each year. However, he also agrees that he only started to list part of the base salary on the payroll, in November, December 1998 and January 1999, for purposes having to do with workers' compensation.

I agree with the delegate. Even if the Employer is correct that Mr. Nowak minimized the tax consequences of his overall compensation package throughout his employment, and--on the evidence at the hearing--this does not appear to be in dispute, vacation pay is owed on the

"wages" as set out in my original Decision. If the Employer intended the auto allowance to be a component of the compensation package, it could have provided for this in the payroll records. The Employer only did this for the last three months of Mr. Nowak's employment.

In the result, I agree with the delegate that there should be no adjustment made to the amount owing in the original Determination.

## **ORDER**

The amount awarded in the Determination dated December 24, 1999 is confirmed.

Ib Skov Petersen Adjudicator Employment Standards Tribunal