

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 -

Greg Mayburry
("Mayburry")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: C. L. Roberts

FILE No.: 2000/302

DATE OF HEARING: July 14, 2000

DATE OF DECISION: July 24, 2000

DECISION

APPEARANCES:

On his own behalf:	Greg Mayburry
On behalf of the Director:	No one appeared
On behalf of G.A.C. Holdings Ltd.:	No one appeared

OVERVIEW

This is an appeal by Greg Mayburry ("Mayburry"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued March 24, 2000. The Director found that the *Act* had not been contravened, and closed the file.

ISSUE TO BE DECIDED

Whether the Director erred in his findings of fact in dismissing the complaint.

Mayburry contends the Director erred in calculating the wages owing.

Mayburry also claimed he had a calendar that was not available during the investigation and that this evidence supports his claim for overtime pay. This ground of appeal was not advanced at the hearing.

FACTS

The facts, as found by the Director's delegate are as follows.

Mayburry worked as a retail sales person for G.A.C Holdings Ltd, operating Pharmasave #220 from June 8, 1998 to August 6, 1999.

G.A.C. Holdings provided daily work records and all other pay related information to the Director's delegate pursuant to a Demand for Records. Mayburry provided a written statement alleging that he had worked a total of 92.5 hours overtime during the period August 8, 1998 and August 31, 1998.

On February 8, 2000, the Director's delegate sought further and better information from Mayburry by March 2, failing which the delegate would have no option but to consider G.A.C. Holding's records correct. Mayburry did not respond to this letter.

Following a review and analysis of G.A.C. Holding's records, the delegate determined that Mayburry was compensated pursuant to the *Act* during his employment period. The records disclosed that Mayburry worked a total of 195.5 hours during the 24 day period August 8 to 31,

1998, for which he was paid 136 hours at straight time, and 59.5 hours either double time or time and one half, depending on the circumstances of the overtime.

The delegate determined that no further action would be taken.

ARGUMENT

Mayburry contends that, after reading the Determination, his fiancée told him that she had a calendar of most of the hours he worked in August, and had packed it away. He said he was unaware of this fact until that time, and that the calendar ought to be considered better evidence to support his claim. As noted above, Mayburry did not advance this ground of appeal at the hearing. However, he argued that the delegate erred in calculating the wages owing.

ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant.

After reviewing the documentation, it does appear there is an error, which the delegate was not able to explain, as he was not present. In his submission on appeal, the delegate states:

On March 24, 2000, I wrote the determination ruling that the claimant was not owed wages based on the evidence presented by the Employer, the daily hour of work records. A copy of the daily hour of work records submitted by the employer for use in the calculation is attached.

One of those records is headed "Employee Detail 8/1/97 to 2/29/00", and shows that between August 1, 1998 and July 31, 2000, Mayburry was paid a total of \$23,811.32 (gross). However, according to the delegate's calculations, Mayburry was paid \$26,395.72. According to the delegate, G.A.C. Holdings Ltd. overpaid Mayburry \$564.72. However, if G.A.C.Holding's records are used, Mayburry is in fact owed \$2,019.68. I am unclear as to how the delegate arrived at the amount of \$26,395.72.

I find that there is sufficient discrepancy in the calculations to send the determination back for recalculation of the amount owed.

ORDER

I Order, pursuant to Section 115 of the *Act*, that the Determination dated March 24, 2000 be sent back to the delegate for recalculation of the amounts owing, if any, to Mayburry.

C.L. Roberts
Adjudicator
Employment Standards Tribunal