

**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 -

Trozzo Holdings Ltd.  
("Trozzo Holdings")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2000/292

**DATE OF HEARING:** July 4, 2000

**DATE OF DECISION:** July 20, 2000

**DECISION**

**APPEARANCES**

for Trozzo Holdings Ltd.	Mirella Trozzo Gina Anna Trozzo
for the individual	No one appearing
for the Director	Joe LeBlanc

**OVERVIEW**

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Trozzo Holdings Ltd. (“Trozzo Holdings”) of a Determination that was issued on March 28, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Trozzo Holdings had contravened Section 16 and Section 18 of the *Act* in respect of the employment of Darcy Letourneau (“Letourneau”) and ordered Trozzo Holdings to cease contravening and to comply with the *Act* and to pay an amount of \$281.75.

Trozzo Holdings says the Determination is wrong because the Director’s calculation of his hours worked are wrong and, in any event, Letourneau owed \$300.00 for moving expenses paid to him by Trozzo Holdings and which should have been repaid when he left their employ.

**ISSUES TO BE DECIDED**

The issue in this appeal is whether Trozzo Holdings has shown the Determination was wrong in respect of any of the matters set out the above paragraph.

**FACTS**

The Determination noted the following under the heading Findings of Fact:

As the employer did not maintain daily hour of work records because they believed they did not have to, as the Claimant was a salaried employee, and as the Employer was only able to provide a work schedule for the period of December 10 through December 31, 1999, in the absence of employer daily hour of works records, I accept the daily hour of work records as maintained and submitted by the claimant for the purpose of calculating whether or not wages are owed.

In respect of the hours worked calculation, the Investigating Officer also chose to rely on the information supplied by Letourneau, who had submitted a record of hours showing he had worked 45 hours from December 1 through December 4, 64 hours from December 5 through December 11, 87 hours from December 12 through December 18, 57 hours from December 19

through 25, 80.5 hours between December 26 and January 1 and 44 hours between January 2 and January 5, 2000.

Trozzo Holdings says in its appeal that:

We did and we have all hours Mr. Letourneau worked for us. Please see attached schedule and time sheet recorded by Gina Trozzo. She kept track of his hours daily.

In support of the above statement, Trozzo Holdings attached the “schedule and time”, which was a December, 1999 calendar with hours and times filled in. The difficulty for Trozzo Holdings with this calendar is threefold. First, this record does not appear to have been provided during the investigation of the complaint. If it was available during the investigation, but was not produced to the Investigating Officer, no good reason has been given for allowing it to be introduced in the appeal. Second, it appears to have been, at least partly, based on a schedule of hours that the Investigating Officer did not accept as being an accurate record of the hours Letourneau actually worked (he accepted Letourneau’s record, which differed substantially from the schedule). Gina Trozzo testified the calendar was, in fact, a list of the hours she *wanted* Letourneau to work. Third, the document was not maintained as a contemporaneous record of hours worked by Letourneau. For example, the entry relating to the period December 17 - 20 contains the note, “went to Eagles Nest, Medicine Hat, Alberta”, suggesting the entry was made after the event. As well, Gina Trozzo was not in Cranbrook on December 31, 1999, January 1 or 2, 2000 and could have made no observations about the amount of time Letourneau worked.

In the final analysis, I do not have to address any of the above concerns as I am satisfied that the “record” presented by Trozzo Holdings in this appeal does not show that the conclusion reached in the Determination about the number of hours worked by Letourneau was wrong, unfair or without any rational foundation.

## **ANALYSIS**

In *Trozzo Holdings Ltd.*, BC EST #D292/00, I noted the reference to the Tribunal’s decision in *West Coast Home & Truss Ltd.*, BC EST #D264/00, and concluded:

That comment applies foursquare to this appeal. Trozzo Holdings has not done anything more than take issue that the Investigating Officer accepted certain information in preference to other information. No evidence has been provided that shows those conclusions were either unfair or without rational basis. As such, they have not met their burden in this appeal and it is dismissed.

That comment also applies here and for the same reasons, I dismiss this part of the appeal.

Finally, I agree with the Director that the \$300.00 moving allowance paid to Letourneau could not be considered wages under the *Act* and therefore could not be included in total wages paid to him by Trozzo Holdings. As well, for the reasons outlined in *Trozzo Holdings Ltd.*, BC EST #D293/00, that amount cannot be deducted from wages owed to Letourneau under the *Act*. The

Tribunal has no authority, even if I felt so inclined, to do what Section 21 prohibits. This aspect of the appeal is also dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated March 28, 2000 be confirmed in the amount of \$281.75, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**