

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Cringan Hobby Supplies Ltd.
operating as Leisure Time Hobbies
("Cringan")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/464

DATE OF DECISION: October 18, 1996

DECISION

OVERVIEW

This is an appeal by Cringan Hobby Supplies Ltd. operating as Leisure Time Hobbies (“Cringan”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determination No. CDET 003546 which was issued by a delegate of the Director of Employment Standards on July 31, 1996. The Determination found that Cringan owes wages to Michael Kocot (“Kocot”) in the amount of \$2306.39 including interest.

ISSUE TO BE DECIDED

The issue to be decided is whether Kocot is owed wages as set out in the Determination.

FACTS

In the Reason Schedule attached to the Determination, the Director’s delegate found that Cringan owes wages to Kocot in the amount of \$2306.39 gross, including interest. This represents overtime wages for the 24 month period commencing May 30, 1994. This finding was based, in part, on the fact that the employer’s records indicated that overtime hours were worked, but were not paid at overtime rates of pay.

The only reason given by Cringan for this appeal is:

We plan to contest the legality of the ‘retroactivity’ of applicable section(s) of Employment Standards Act. Please postpone proceedings pending my receipt of legal advice expected in 1-2 days.

Subsequent submissions received from Cringan make no reference to the above reason. The only issue that is brought up concerns statutory deductions. Cringan advises that income tax, CPP, and UIC contributions have not been deducted from the calculations and it wants a revised Determination.

ANALYSIS

As the appellant, Cringan bears the onus of demonstrating to the Tribunal that the Determination is deficient or defective. In my view, Cringan has not done that.

Cringan's appeal does not challenge the findings of the Director's delegate that overtime wages are owed to Kocot.

Cringan indicated that it planned to contest the "retroactivity" section of the *Act*, but it did not. In any event, the *Act* is clear. Section 128 (3) is a clear statement of the legislative intent for the retrospective operation of the provisions of the *Act*. The complaint of Kocot is for all purposes, including Section 80 (which increased the liability of an employer to an employee for wages from six to twelve months), governed by the provisions of the new *Act*.

Finally, it is the employer's responsibility, and not the responsibility of the Director's delegate or the Tribunal, to determine appropriate statutory deductions from gross wages.

For the above reasons, I find no grounds on which to disagree with the Determination.

ORDER

I order pursuant to Section 115 of the *Act* that Determination No. CDET 003546 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal