

**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 -

Mike L. Kernel  
("Kernel")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton  
**FILE NO.:** 98/310  
**DATE OF HEARING:** August 4, 1998  
**DATE OF DECISION:** August 11, 1998

**DECISION**

**APPEARANCES**

Mike L. Kernel                      on his own behalf

**OVERVIEW**

This is an appeal by Mike L. Kernel (“Kernel”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination which was issued on May 5,1998 by a delegate of the Director of Employment Standards. The Director’s delegate determined that Mr. Kernel’s former employer, Brown & Father Contractors Ltd., had contravened Section 40 of the *Act* and, as a result, owed wages to Kernel in the amount of \$674.56 including interest. Kernel’s appeal is based on his submission that in calculating his entitlement to wages, the Director’s delegate did not include all hours worked by him while employed by Brown & Father.

A hearing was held at the Tribunal’s offices on August 4,1998 at which time Mr. Kernel presented his case. Although duly notified of the hearing, a representative of Brown & Father did not appear.

**ISSUE TO BE DECIDED**

Did the Director’s delegate err in calculating Mr. Kernel’s entitlement to wages under the *Act*?

**FACTS**

Mr. Kernel was employed as a cabinet-maker by Brown & Father from May 23,1996 to June 20,1997 at a wage of \$17.00 per hour. The Director’s delegate determined that Brown & Father did not comply with Section 40 of the *Act* “...and, therefore, a wage adjustment is owing to Kernel for overtime hours worked.” She calculated the amount of overtime wages owed to Kernel to be \$674.56 including interest. An “Overtime Calculation Report” attached to the Determination set out the details of the calculations made by the Director’s delegate. There is no dispute that Mr. Kernel was paid a total of \$31,514.60 (gross) during his period of employment.

Brown & Father paid wages every two weeks and issued a statement of earnings with each paycheque. Those statements show that Mr. Kernel worked a total of 1782.5 hours during his employment. Brown & Father’s payroll records show a total of 1769.5 hours worked by Kernel, however the 13 hours worked by him on June 19/20,1997 were not included in

those records. The “Overtime Calculation Report” shows that Kernel worked a total of 1682.5 hours, or 100 hours less than Brown & Father’s payroll records. Mr. Kernel submits that the Director’s delegate erred in determining the number of hours that he worked and, therefore, did not correctly calculate his entitlement to wages.

**ANALYSIS**

I am satisfied from my review of the payroll records (“Employee Detail” report and bi-weekly “Statement of Earnings”) that Mr. Kernel worked a total of 1782.5 hours during his employment with Brown & Father. According to the Director’s delegate, the “Overtime Calculation Report” was based on the “...daily time records provided by the employer with the addition of Kernel’s records for June 19/20, 1997.” I find that those daily time records were incomplete and prefer the employer’s payroll records as the best evidence of the hours worked by Mr. Kernel.

The Determination shows \$30,923.00 as the amount of total wages earned by Mr. Kernel. An additional \$1,700.00 should be added to this amount to account for the 100-hour error, with the following result:

Total wages earned	\$30,923.00
100 hours @ \$17.00/hour	<u>1,700.00</u>
sub-total	\$32,623.00
4% vacation pay	<u>1,304.90</u>
sub-total	\$33,927.90
less wages paid by employer	<u>\$31,514.60</u>
	<b>\$ 2,413.30</b>

**ORDER**

I order, under Section 115 of the *Act*, that the Determination be varied to show that Mr. Kernel is entitled to wages in the amount of \$2,413.30 plus interest accrued in accordance with Section 88 of the *Act*.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**