

**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 -

Villa Agencies, Go Transport Ltd. and Advanced Fleet Maintenance Ltd.  
(the “Employer”)

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Mark Thompson

**FILE No.:** 2000/315

**DATE OF DECISION:** August 14, 2000

## DECISION

### OVERVIEW

This decision resolves the final issue to be decided from an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Villa Agencies Inc., Go Transport Ltd. and Advanced Fleet Maintenance Ltd. (the “Employer”) against a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on April 16, 1999. The Determination found that the Employer owed Kenneth Berghall (“Berghall”), \$6,082.07 for overtime pay, statutory holiday pay, annual vacation pay, compensation for length of service and interest. The Employer appealed the Determination on May 10, 1999. The appeal was the subject of a Decision of this Tribunal, *Villa Agencies Inc., et al.*, BC EST #D516/99. The Decision confirmed the Determination in all respects except for the calculation of hours worked and overtime wages. The Adjudicator referred the Determination back to the Director for recalculation of the amount of overtime wages due to Berghall based on the conclusions in the Decision.

The Director’s delegate recalculated the amount owed to Berghall. The adjusted amount was \$3,686.64, including interest to May 3, 2000. The delegate provided the Employer’s representative, Mark Maarsman (“Maarsman”) with copies of the new calculations. Maarsman replied that the Employer had filed suit against Berghall for alleged damage to the Employer’s vehicles. The Employer declined to pay the amount determined by the delegate on the grounds that Berghall owed a greater amount under the pending suit. Maarsman did not comment on the recalculated amount owed to Berghall.

Berghall informed the delegate that he had declared bankruptcy and wanted the money due him under the Determination to be paid to the bankruptcy trustee.

The Director’s delegate filed the statement of wages owed to Berghall with the Registrar of the Tribunal on May 4, 2000. The Registrar provided copies to interested parties, including the Employer, Maarsman and Berghall. Her letter advised the parties that an Adjudicator would decide the dispute, based on written submissions or an oral hearing.

The Registrar did not receive any submissions from the parties.

### ORDER

After reviewing the evidence, I conclude that the Director’s delegate has recalculated the overtime pay and other entitlements owed to Berghall according to the previous decision of the Tribunal. Pursuant to Section 115 of the *Act*, I order that the Determination of April 16, 1999 be confirmed in respect to hours worked and wages owed to Berghall in

the amount of \$3686.23, plus any additional interest due under Section 88 of the *Act* from the date of the Determination.

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**Mark Thompson**  
**Adjudicator**  
**Employment Standards Tribunal**