

**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 -

Julieta Bato and Allen Klarreich, a partnership operating  
Janiking Commercial Janitorial Services  
associated with  
Bato Enterprises Ltd.  
("Bato" or "the Employer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/206

**DATE OF HEARING:** July 14,1997

**DATE OF DECISION:** July 17,1997

**DECISION**

**APPEARANCES**

Julieta Bato                    on behalf of the Employer

Mohsen Sithole                on his own behalf

**OVERVIEW**

This is an appeal by the Employer, under Section 112 of the *Employment Standards Act*, of a Determination which was issued on March 5, 1997 by a delegate of the Director of Employment Standards (the "Director"). The Determination found that the Employer contravened sections 18, 34 and 58 of the *Act* by failing to pay wages, minimum daily pay and vacation pay to Mohsen Sithole in the amount of \$346.93 (including interest).

A hearing was held at the Tribunal's offices on July 14, 1997 at which time I heard evidence under oath.

**ISSUE TO BE DECIDED**

Does the Employer owe wages to Mohsen Sithole as set out in the Determination?

**ANALYSIS**

At the hearing, I explained that in filing this appeal the Employer must show that the Determination is flawed in either the application of the *Act* or in the findings made by the Director's delegate. The Employer, having filed an appeal, must prove its case.

An interpretation of the *Act* is not at issue in this appeal. The issue in dispute is factual in nature and, therefore, the Employer must show that the findings made by the Director's delegate were wrong. In evaluating evidence, I must decide on the balance of probabilities which evidence I should prefer.

There were considerable differences in the evidence given at the hearing by Ms. Bato and Mr. Sithole. When I review and consider all of the evidence which I heard and the documents which were submitted to the Tribunal, I find that there is no reason to vary or to cancel the Determination. I make that finding for the following reasons:

- The Employer acknowledged that its employment agreement with Mr. Sithole contravened section 34 of the *Act* (Minimum Daily Pay);

- it was reasonable for the Director's delegate to rely on the Coast Hotel's records as the best evidence of Mr. Sithole's hours of work;
- the Employer's evidence did not cast doubt on Mr. Sithole's evidence concerning his hours of work and payment of wages; and
- on the balance of probabilities, it is reasonable for me to conclude that Mr. Sithole's evidence should be preferred.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination be confirmed.

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