# 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-

444 Flowers Flowers Ltd.

(the "employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 98/241

**DATE OF DECISION:** July 10th, 1998

## DECISION

### OVERVIEW

This is an appeal brought by 444 Flowers Flowers Ltd. (the "employer") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) from a Determination issued by the Director of Employment Standards (the "Director") on March 25th, 1998 under file number 218050 (the "Determination").

The Director determined that the employer owed its former employee, Nabil Tabet ("Tabet"), the sum of $759.21 on account of unpaid wages (including daily overtime pay, statutory holiday pay, vacation pay, minimum daily pay) and interest.

### ISSUE TO BE DECIDED

The employer concedes that the Determination is substantially correct but submits that the Director's delegate erred in awarding Tabet wages when "he didn't work for 4 days" and requests that the Determination be reduced by $260.17. The days in question are not particularized in the employer's appeal form. However, based the employer's letters to the Tribunal dated May 13th and June 3rd, 1998 and the delegate's written submission to the Tribunal dated May 21st, 1998, I understand that the days allegedly not worked were August 19th, October 7th and 21st, and December 26th, 1996.

### FACTS AND ANALYSIS

The employer is a florist; Tabet was employed as a floral designer, at an hourly wage of $8.50, from August 19th, 1996 to January 25th, 1997.

During the course of her investigation, the delegate received records showing hours worked from both the employer and Tabet. The delegate "reviewed both sets of records and determined that the employee's records were the most reliable, as the employer's records were often illegible, and included many corrections and deletions, and were therefore difficult to rely upon" (Delegate's submission to the Tribunal dated May 21st, 1998).

Having reviewed the employer's payroll records, I must conclude that the delegate was absolutely accurate in her characterization of those records. The delegate had before her records submitted by Tabet showing that she worked on August 19th and October 7th, 1996 and the delegate was entitled to conclude, on the basis of the evidence before her (as she did), that Tabet worked on each of those two days as he alleged. However, in a written submission to the Tribunal dated May 26th, 1998, Tabet admitted that he did not work on either October 21st ("I have not claimed that I worked on that day") or December 26th ("I didn't claim that I worked on that day"), 1996.

The delegate determined that Tabet worked 5.5 hours on October 21st, 1996 and 4.0 hours on December 26th, 1996. Given Tabet's admission that he did *not* work on those latter two days, in my view, the Determination ought to be varied accordingly.

I have calculated the adjustment in favour of the employer as follows:

9.5 hours x $8.50 per hour = $80.75 plus 4% vacation pay adjustment = $83.98

The delegate determined that Tabet was entitled to unpaid wages in the amount of $718.02 plus interest; I have concluded, based on the above analysis, that Tabet's unpaid wage claim totals $634.04 (*i.e.,* $718.02 minus $83.98) plus interest.

## ORDER

Pursuant to section 115 of the *Act,* I order that the Determination be varied to reflect an amount payable by the employer to Tabet of **$634.04** together with additional interest to be calculated by the Director in accordance with the provisions of section 88 of the *Act.*

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**Kenneth Wm. Thornicroft,** ***Adjudicator***
**Employment Standards Tribunal**