

An appeal

- by -

Wendy Michnick
("Michnick")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: David B. Stevenson

FILE No.: 2002/018

DATE OF DECISION: July 18, 2002

DECISION

OVERVIEW

This is another decision on an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Wendy Michnick (“Michnick”) of a Determination that was issued on October 5, 2001 by a delegate of the Director of Employment Standards (the “Director”).

Michnick had filed a complaint with the Director under the *Act* alleging she was owed overtime pay and statutory holiday pay by her former employer, Prentice Hall Canada Inc. (“Prentice Hall”). The Determination concluded the *Act* had not been contravened, ceased the investigation of the complaint and closed the file. In an earlier decision, BC EST # D006/02, I decided that Michnick had met the burden of justifying the intervention of the Tribunal under Section 115 of the *Act* and ordered some aspects of the Determination be referred back to the Director.

The Director reviewed the file and addressed some of the perceived deficiencies in the Determination. By way of submission dated January 22, 2002, the Determination was amended to show an amount owing of \$3,901.68. There were responses received on this submission by counsel for Prentice Hall, dated February 27, 2002 and on behalf of Michnick, dated March 5, 2002. Following receipt of the submission made on behalf of Michnick, the Director reviewed the information provided in that submission and varied the amount owing to \$2,857.80.

Notwithstanding the matter had been reviewed at least twice by the Director, there was no reference in the calculations to two dates, May 31 and June 6, 1999, where the material on file suggested Michnick had travelled to or from Toronto. The Director was asked to address those dates and on April 29, 2002, the Tribunal received that review and a further amendment to the Determination showing an amount owing of \$3,162.22. This information was sent to the other parties and no reply has been received. This amount represents the initial review of the file, adjusted by submissions filed by Michnick and counsel for Prentice Hall.

In her reply to the initial calculation dated January 22, 2002, Michnick identified several flaws in the Director’s submission. The flaws that were identified addressed by the Director in the two subsequent submissions, March 5, 2002 and April 29, 2002. Counsel for Prentice Hall conditionally accepted the initial calculation and, as indicated above, has made no further submission.

Absent any reason for rejecting the final calculation made by the Director, I am satisfied the amount found to be owing in the April 29, 2002 submission adequately responds to the matters of concern raised in my decision and reasonably reflects the amount owing to Michnick under the *Act*.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated October 5, 2001 be varied to show an amount owing of \$3,162.22, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal