

**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 -

William V. Johnston  
("Johnston")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 98/391

**DATE OF HEARING:** August 13, 1998

**DATE OF DECISION:** August 25, 1998

**DECISION**

**APPEARANCES**

W. Johnston

On his own behalf

S. Gardner

Witness

**OVERVIEW**

William Johnston, pursuant to section 112 of the *Employment Standards Act* (the “Act”), appeals a Determination by a delegate of the Director of Employment Standards dated May 27, 1998. The Determination is that Buttar Transport Ltd. (“Buttar Transport”) does not owe William Johnston further wages.

**ISSUES TO BE DECIDED**

At issue is the matter of whether or not Johnston has been paid his wages. The Determination is that Johnson is not owed further wages. The delegate found that a report from the Workers’ Compensation Board did not support his Complaint. On appeal, Johnston again claims that he worked for Buttar Transport in September and October but was paid only in part for that work.

**FACTS**

Bill Johnston began work as a driver for Buttar Transport on September 1, 1997.

According to Johnston, Gary Buttar of Buttar Transport agreed to pay him \$12.00 an hour for his work.

Johnston had been receiving Workers’ Compensation Board (“WCB”) payments. Johnston contacted the WCB and suggested that it might assist in the paying of his wages. That led the WCB to contact Buttar on the 8<sup>th</sup> of September. The WCB on the 11<sup>th</sup> of September decided that, as a way of providing Johnston with on-the-job training, it would pay him WCB benefits, regular wage loss equivalency allowances to be more specific, that is, of course, as long as he made satisfactory progress. The above is all set out in a letter from the WCB to the delegate dated April 23, 1998.

WCB records appear to indicate that it decided to pay Johnston \$977.31 a month directly. In fact, it paid him only \$480.63 before terminating the payments when it learned that

Johnston was refusing to work for what he was being paid. By Johnston's calculations he was being paid not much more than \$3.00 an hour.

There is no evidence that Buttar paid any moneys to Johnston. It appears that Johnston was paid only the subsidy paid by the WCB.

If Buttar Transport kept a record of hours worked, that is not shown to me.

A Driver's Daily Log indicates that Johnston worked for Bath International, which according to Johnston, is Buttar Transport by another name. The log shows 112.25 hours of work between September 1, 1997 and September 18, 1997. Johnston claims work beyond that but he does not produce a record of the work. Other parts of his log have been lost. Yet Johnston leads me to believe that there may exist other evidence of work for Buttar Transport. He tells me that he was co-driver of a Buttar Truck, and in the passenger's seat, when it went hit a bridge near One Hundred Mile House on October 7, 1997. He incurred serious injuries. There is bound to be a record of that accident.

## **ANALYSIS**

Johnston was hired and performed work for Buttar Transport. That is clear. Johnston produces evidence of work between the 1<sup>st</sup> of September and the 18<sup>th</sup> of that month, 112.5 hours of work in total. There is evidence pointing to a rate of \$12 an hour and there is some reason to believe that there was work beyond that, to the 7<sup>th</sup> of October, 1997. There is no evidence establishing anything to the contrary. And there is no evidence showing that Johnston was paid anything beyond the \$480.63 that he was paid by the WCB as a training subsidy.

The Determination rejects Johnston's claim for wages without explanation. The delegate states only that a WCB report does not support Johnston's claim. I find that that falls well short of providing reasons as section 81 (1) (a) of the *Act* requires. In part, that is because the Determination does not say why Johnston's evidence, evidence which appears to me to be in clear support his claim, was rejected. But it is also because, on reading the WCB documents that I am provided, I find that while it is true that they do not support Johnston's claim, it is also true that they in no way undermine it. Nothing establishes that there was less work than is alleged by Johnston or that the rate of pay was less than \$12 an hour.

In summary, as matters are presented to me, I find uncontradicted evidence of work and a failure to pay for work. I also find that the Determination is without reasons and is therefore contrary to section 81 (1)(a) of the *Act*. That leads me to refer the Complaint back to the Director for both further investigation and the provision of reasons, for whatever the Director or her delegate may find.

**ORDER**

I order, pursuant to section 115 (b) of the *Act*, that the matter, of whether William Johnston is owed wages by Buttar Transport, be referred back to the Director for further investigation, and the provision reasons, for whatever conclusions the Director or one of her delegate's may reach.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunals**