

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1995, C. 38*

- by -

Blue Bird Travel Inc.  
("Blue Bird")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 96/505

**DATE OF HEARING:** December 19, 1996

**DATE OF DECISION:** December 31, 1996

**DECISION**

**OVERVIEW**

The appeal is by Blue Bird Travel Inc. (“Blue Bird”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 003619 of the Director of Employment Standards (the “Director”), a decision dated August 8, 1996. Brent W. Coate was found to be owed vacation pay and commissions after deductions for cancelled bookings and time taken off by the employee.

The appeal alleges that the Determination is wrong in that it does not take into account two other days taken off by Coate and other cases in which bookings were cancelled.

**APPEARANCES**

Ted Yoon	Representing Blue Bird
Victor Lee	For the Director

**FACTS**

Coate was employed by Blue Bird as its travel manager from May 2, 1995 to February 29, 1996.

Coate’s claim was for vacation pay, wages and commissions. In issuing Determination 3619, Blue Bird was found to owe vacation pay in the amount of \$587.27 and commissions of \$31.81. Coate was found to have been paid for 58 hours of work even though absent and as a result, \$501.70 was deducted from the amount found owing by Blue Bird leaving a total of \$120.95.

In appealing the determination, Blue Bird argues that in fact no commissions are owed because of a number of cancelled bookings which meant in the end that no commissions were paid to Blue Bird. In that regard two sets of computer printouts are submitted and said to show that despite bookings having been made, they were cancelled. Blue Bird also argues that Coate was away from work for another 2 days beyond the days that the officer found him away.

Blue Bird claims that in fact Coate owes it money, given the cancelled bookings and the number of days he was absent from work. Blue Bird also claims \$991.26 on the basis of Coate’s approval of a fraudulent credit card transaction and another \$1,148.11 on the basis of what was lost as a result of what Blue Bird says was Coate’s “misunderstanding of the dates which (a) client wanted”.

**ISSUES TO BE DECIDED**

The issues to decide are whether commissions are incorrectly found to be owed Coate for reservations that were later cancelled and whether Coate was away as determined by the Director’s delegate, or away more than that.

As explained to Blue Bird, the other matters which are raised through its appeal are issues which are beyond the authority of the Tribunal, given the *Act* and it concern with employment standards matters.

**ANALYSIS**

Considerable time was taken up by an examination of the employer's records in an effort to determine the extent to which bookings were cancelled and how many days Coate was in fact away from work. On the basis of those records, which are not adequate in many respects, a point realised by the employer, I am unable to find fault with the conclusions of the Director's delegate. The employer has simply not produced any hard evidence of cancelled reservations and the employer is unable to show that Coate was in fact absent for more than 58 hours, the time that the Director's delegate found that he was away.

I conclude that \$120.95 is owed Coate, the amount of the Determination.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 003619 be confirmed.

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

LDC:jel