

**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 -

Balbir Lalli and Anju Sharma operating as S & S Masonry  
("S&S")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 1999/317

**DATE OF HEARING:** August 27, 1999

**DATE OF DECISION:** September 27, 1999

**DECISION**

**APPEARANCES**

Palvinder Lalli	on behalf Balbir Lalli and Anju Sharma operating as S & S Masonry
Balbir Lalli	on behalf Balbir Lalli and Anju Sharma operating as S & S Masonry
Amarjit Leahl	on his own behalf
Surinder Owen	observer

**OVERVIEW**

This is an appeal by Balbir Lalli and Anju Sharma operating as S & S Masonry (“S&S”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated May 3, 1999 issued by a delegate of the Director of Employment Standards (the “Director”). S&S allege that the delegate of the Director erred in the Determination by concluding that Amarjit Leahl (“Leahl”) was owed wages in the total amount of **\$1,071.91** (includes interest).

**ISSUE**

The issue to be decided in this appeal is whether wages in the amount calculated by the delegate of the Director are owed to Leahl ?

**FACTS**

The following facts are not in dispute:

- Leahl worked as a bricklayer for S&S from August 9, 1996 to January 31, 1997;
- S&S kept records for the work performed by Leahl from August 9 to December 4, 1996;
- Leahl kept records for the period December 5, 1996 to January 31, 1997;
- S&S payroll records provided to the delegate of the Director indicate that Leahl was paid a total of \$7,439.58;

The delegate of the Director recalculated the earnings of Leahl and determined that Leahl actually earned a total of \$8,387.60 (wages and vacation pay) and issued the Determination for the difference owing.

S&S argues that after reviewing the Determination issued, they were able to find 2 additional cheques for \$600.00 each issued to Leahl for wages. S&S states that these cheques were misfiled and discovered among some other papers at one of the owner's home. S&S further states that both of these cheques were for wage advances and the reason for the July 27, 1996 cheque was that Leahl would not agree to commence working for S&S unless he was given this advance.

Leahl agreed that he had received the cheque dated September 6, 1996 as an advance on his wages. Leahl states that the cheque dated July 27, 1996 was in fact a "loan" from one of the owners and was not wages.

## ANALYSIS

The onus of establishing that the delegate of the Director erred in the Determination rests with the appellant, in this case, S&S.

With Leahl agreeing that he did receive the September 6, 1996 cheque in the amount of \$600.00 as an advance on wages, I must only decide whether the cheque dated July 27, 1996 constitutes wages for Leahl.

I am cognizant of the position the Tribunal takes in regard to accepting evidence during the appeal when that evidence was not provided during the investigation, however, when considering the circumstances of this particular case and the explanations provided by S&S, I am persuaded that it would be appropriate for this panel to accept the evidence of the 2 cheques.

When I reviewed the original of the cheque dated July 27, 1996, which incidentally is prior to the date Leahl began to work for S&S, I noted that the words *wage advance* are made in a different colour of ink and appear to be written by someone other than the person who wrote out the body of the cheque. There was no evidence submitted by S&S in regard to the claim by Leahl that this cheque was a 'loan' from one of the owners.

Based on the evidence provided and on the balance of probabilities, I conclude that the cheque in the amount of \$600.00 dated September 6, 1996 was a part of the wages paid to Leahl and is to be considered in the calculation of wages owing. I further conclude that the cheque in the amount of \$600.00 dated July 27, 1996 was *not* a part of the wages paid to Leahl. I am not convinced, on the balance of probabilities, that this cheque was rendered for the purposes of wages and therefore will not consider it in the calculation of wages owing.

The wages determined by the delegate of the Director to be owing to Leahl are therefore adjusted as follows:

Wages earned	\$8065.00
Vacation pay	<u>\$ 322.60</u>
Total	\$8387.60
Less Wages paid (\$7439.58 + \$600)	<u>\$8039.58</u>
<b>Total wages owing</b>	<b>\$ 348.02</b>

The appeal by S&S is therefore granted in part as outlined above.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 3, 1999 be varied to be in the amount of **\$348.02** together with whatever interest has accrued pursuant to Section 88 of the *Act* since the date of issuance.

**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**