

**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 -

Earle Daniel Bean  
("Bean")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 97/350

**DATE OF HEARING:** August 27, 1997

**DATE OF DECISION:** September 5, 1997

## DECISION

### APPEARANCES

Earle Daniel Bean	on his own behalf
Bernie Grobowsky	on behalf of Accurate Floor Fashions Inc.
Gordon Finnie	on behalf of Accurate Floor Fashions Inc.

### OVERVIEW

This is an appeal by Earle Daniel Bean (“Bean”) under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated April 16, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). The delegate of the Director concluded that Bean was owed wages of \$296.50 plus interest for a total amount of \$304.01 from Accurate Floor Fashions Inc. (“Accurate”). Bean alleges that the delegate of the Director erred in the Determination by not considering commissions that had been earned and had not been paid. Accurate states they have forwarded the amount of \$304.01 to the Director.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Bean is owed further wages ?

### FACTS

The following facts are not in dispute:

- Bean was employed by Accurate as a ‘Salesperson’ from September 30, 1996 to October 19, 1996;
- Bean received a total of \$755.00 in wages for this period of employment;
- Accurate did not keep any records of the hours Bean worked;
- Unauthorized deductions of \$19.89 and \$17.10 were taken from Bean’s pay.

Bean states that:

- he was to be paid on the basis of \$7.00 per hour **plus** commissions and further this was stated in a letter to the delegate of the Director by the manager at the time, Doug Parsons (“Parsons”)
- there are a number of sales for which he did not receive any commissions;
- his daily diary and the accompanying bus transfers clearly establish his hours of work.

Accurate states that:

- subsequent to the Determination being issued they have located a copy of the employment contract signed by Bean;
- this employment contract clearly indicate that Bean is to be paid solely by commissions, although the rate of commission to be paid is not stated;
- it is their understanding that the information contained in Bean’s daily diary was entered after the complaint was filed, not at the time the work was alleged to have been performed;
- the former manager Parsons did not keep the necessary records in the appropriate manner.

## ANALYSIS

Bean received 2 pay statements during his period of employment, one was calculated on a per hour basis at minimum wage and the other was calculated as “commissions payable”, however, no rate of commissions was indicated. Both Bean and Accurate agreed that with respect to the commission statement they “adjusted the figures until the amount seemed right” and that no specific rate of commissions was ever discussed.

I am satisfied that Bean was hired on the basis of being paid \$7.00 per hour **plus** commissions. I am further satisfied that Bean may well be owed additional wages, however, in the absence of any evidence of the specific rate of commission to be paid, I am not prepared to speculate what the commission rate might have or should have been.

The absence of any specified commission rate restricts me to consider Bean’s earnings based solely on the hourly rate of \$7.00 per hour.

I am further satisfied that in the absence of records to the contrary from Accurate, that Bean did work the hours as submitted to the delegate of the Director. I also concur with the calculation of wages earned, paid and owing performed by the delegate of the Director.

For all of the above reasons, the appeal by Bean is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated April 16, 1997 be confirmed in the amount of \$304.01.

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

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