

**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 -

Sammy S. Ali operating as Roti Kabab House

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 97/555

**DATE OF DECISION:** September 23, 1997

## DECISION

### OVERVIEW

This is an appeal by Sammy S. Ali operating as Roti Kabab House ( “the Employer”), under Section 112 of the Employment Standards *Act* (the “*Act*”), against a Determination which was issued on June 18, 1997 by a delegate of the Director of Employment Standards. The Determination requires the Employer to pay wages to two former employees, Aman Chahal and Khatiza Ramzan, in the amount of \$4,312.38 (including interest).

In its appeal, the Employer disputes the number of hours which the Director’s delegate determined that Ms. Ramzad worked. He also submits that he has paid all wages owing to Ms. Chahal. Mr. Ali also expressed his desire to resolve the matter informally. At his request, informal settlement discussions took place by telephone with the assistance of the Tribunal’s settlement officer but those discussion did not resolve the appeal.

This decision follows my review and analysis of the Determination and the parties’ written submissions.

### ISSUES TO BE DECIDED

Are Aman Chahal and Khatiza Ramzan entitled to the wage amounts as set out in the Determination dated June 18, 1997?.

### FACTS

Ms. Chahal was employed by the Employer from July, 1996 to September, 1996 and Ms. Ramzan was employed from June, 1996 to September, 1996. Both filed a complaint with the Employment Standards Branch in which they alleged that they had received partial payment of their wages during the period of their employment. The complaints were investigated by a delegate of the Director of Employment Standards. That investigation revealed that the Employer acknowledged that “some wages were owed” but there was a dispute about how many hours the two employees had worked.

The following findings (set out at page 2 of the Determination) were made by the Director’s delegate after her investigation during which she understood a settlement agreement had been reached:

1. Ms. Chahal was employed from July 18 to September 20, 1996, at which time her employment was terminated. She kept exact records of hours worked and I accepted these as an accurate reflection of hours worked.

2. Ms. Ramzan was employed from June 29 to September 6, 1996, at which time she quit her employment. She kept a record of all the dates worked, but could only state that she had worked at least 8 to 10 hours each day. I accepted that her records were accurate as far as dates worked but could not prove her claim for any hours beyond 8 in a day.
3. The employer declined to provide any records.
4. The business was sold in September or October 1996.

Based on those findings, the Director's delegate concluded that Ms. Chahal was owed \$1,056.75 in wages and interest; Ms. Ramzan was owed \$3,255.63 in wages and interest. A detailed calculation schedule was attached to the Determination. The Employer's appeal offers two primary reasons for seeking to have the Determination varied:

1. Ms. Ramzan was a part-time employee who never worked more than 5 hours per day; and
2. Ms. Chahal has received all wage payments to which she was entitled.

He also alludes to his current financial difficulties due to the failure of the business last Fall. However, the Employer did not submit any documents to the Tribunal to support its grounds of appeal. The Employer also submits that he had been unable to conclude a settlement agreement prior to the Determination being issued because he was ill at that time. In her submissions (dated August 1, 1997) the Director's delegate stated:

"...please note that I met with Mr. Ali on March 11, 1997 in an effort to resolve the complaints. At that time Mr. Ali told me that he and Ms. Chahal had settled their differences and I began the process of negotiating a settlement between Mr. Ali and Ms. Ramzan.

Ms. Ramzan reluctantly agreed to a settlement of significantly less than what she felt was her entitlement and Mr. Ali and I agreed to a schedule of payments. Every attempt was made to accommodate Mr. Ali's illness and financial circumstances.

Mr. Ali subsequently failed to honour the agreement. Ms. Chahal also contacted me and advised that Mr. Ali had reneged on their agreement."

In the same submission the Director's delegate sought to vary the amounts payable under the Determination. However, in a second submission (dated September 12, 1997) she stated:

In my submission of August 1, 1997, I indicated that the calculations on the Determination were in error I had neglected to include wages paid by the employer. However, I note that this was not the case. **The amounts**

**included in the determination are the actual amounts owed, according to my calculations.** (emphasis in original)

The Tribunal disclosed the Director's August 1, 1997 submission to the Employer and the employees with a requirement that any response be sent to the Tribunal no later than September 4, 1997. The Employer did not respond.

## ANALYSIS

This is an appeal under Section 112 of the *Act*. It is trite law that in an appeal the appellant (the Employer in this case) bears the onus of proving its case. In the circumstances of this appeal, the Employer bears the onus of establishing that the Determination ought to be varied or cancelled.

The Employer's reasons for appeal do not dispute that it did not provide any records to the Director's delegate during her investigation of the employee's complaints.

In *BWI Business World Incorporated* (BCEST# D050/96) the Tribunal describes why the conduct of an investigation and the issuance of a determination by the Director's delegate is a quasi-judicial process:

Once a complaint has been filed, the Director has both an investigative and an adjudicative role. When investigating a complaint, the Director is specifically directed to give the "person under investigation" (in virtually every case, the employer) "an opportunity to respond" (section 77). At the investigative stage, the Director must, subject to section 76(2), enquire into the complaint, receive submissions from the parties, and ultimately make a decision that affects the rights and interests of both the employer and the employee. In my view, the Director is acting in a quasi-judicial capacity when conducting investigations and making determinations under the Act [*cf. Re Downing and Graydon* 21 O.R. (2d) 292 (Ont.C.A.)].

During the investigation of Ms. Chahal's and Ms. Ramzan's complaints the Employer did not provide any records to the Director's delegate. As a result, the Director's delegate relied on Ms. Chahal's "exact records of hours worked" and accepted that Ms. Ramzan's records "...were accurate as far as dates worked but could not prove her claim for any hours beyond 8 in a day." The Employer now seeks to challenge those findings which were made by the Director's delegate, but offers nothing more than an assertion that Ms. Ramzan was "...only working part-time" and that Ms. Chahal was a student who worked only on two or three days.

Section 28 of the *Act* requires an employer to keep records pertaining to each employee's date of employment and hours of work, etc. It is clear from the Determination and the parties submissions that despite the absence of the Employer's records, the Director's delegate found that wages were owed to Ms. Chahal and Ms. Ramzan. She undertook

informal settlement discussions and believed that a settlement agreement had been concluded. However, the wages remained unpaid and the Determination was issued. After the Employer submitted its appeal to the Tribunal further settlement discussions took place but were not successful.

Section 114(1)(c) of the *Act* allows the Tribunal to dismiss an appeal if it is "...frivolous, vexatious or trivial or is not brought in good faith." Black's Law Dictionary (6th edition) defines "frivolous" as:

A pleading (which) is clearly insufficient on its face and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purpose of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.

Similarly, a frivolous appeal is defined as "...one in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed."

As noted above, the Employer bears the onus of proving its case. To have some prospect of meeting that onus the Employer must submit some evidence or argument which challenges the material point in the Determination. When I review the Determination, the Employer's appeal and the parties' submissions I find that this appeal is devoid of merit because the Employer has not made any submission nor given any evidence to challenge or controvert the findings made by the Director's delegate in the Determination. I also find that the Employer has not challenged the rationale set out in the Determination. Furthermore, I find that neither Mr. Ali's illness earlier this year nor his financial difficulties following the failure of his business can be grounds which absolve the Employer of its liabilities under the *Act*. For all of these reasons I dismiss the appeal under Section 114 of the *Act* as I find that it is a frivolous appeal.

## **ORDER**

I order, under Section 115 of the *Act*, that the Determination be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

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