



An appeal

- by -

Elaine Salo, operating as Coastal Cleaners

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C.113*

**ADJUDICATOR:** John M. Orr

**FILE No.:** 2001/448

**DATE OF DECISION:** August 23, 2001

## DECISION

### OVERVIEW

This is a quantum adjudication arising out of an appeal by Elaine Salo operating as Coastal Cleaners (“Salo”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) from a Determination (File No.098777) dated October 13, 2000 by the Director of Employment Standards (the “Director”).

Douglas Mattson (“Mattson”) worked for Salo from November 19, 1998 to August 03, 1999. Mattson was paid as a sub contractor on a pure commission basis. The Director determined that Mattson was not a sub contractor and was in fact an employee and therefore entitled to benefits under the *Act* such as overtime wages, statutory holiday pay, and vacation pay.

Salo appealed this decision on the grounds that the Director was wrong in law in finding an employer/employee relationship between the parties. Salo submits that the parties had entered into an agreement or contract that clearly stipulated that Mattson was a contractor and not an employee. Salo also appeals the factual basis for the calculation of hours worked and the methodology of calculation used by the Director’s delegate (“the delegate”).

On March 27, 2001 I issued a decision (BC EST #D148/01) in which I confirmed the Director’s determination that Mattson was an employee but I referred the matter back to the Director to recalculate wages owing based on the minimum wage. That calculation has been completed and submitted.

### ISSUE TO BE DECIDED

The issue to be decided in this adjudication is simply the matter of quantum of wages.

### ANALYSIS

In accordance with the decision of the Tribunal the Director’s delegate recalculated the wages earned by Mattson and remaining unpaid in accordance with the minimum wage rate.

The delegate found that Mattson had received at least minimum wage for basic wages and overtime and that there was no amount still owing.

The delegate found that there were occasions where Mattson was not paid the daily minimum number of hours required and that an amount of \$139.43 was owing.

The delegate found that the proper statutory holiday increments were not paid and that an amount of \$577.34 was owing.

The delegate found that there was vacation pay owing in the amount of \$670.74.

The total wages owing, as calculated by the delegate, before interest is \$1,387.51

Mattson has applied to the Tribunal for a reconsideration of BC EST #D148/01 and that may affect this decision. However, if the original decision is upheld or the reconsideration application dismissed, Mattson does not dispute the calculations made by the delegate.

Ms. Salo maintains that Mattson was a contractor and that the hours claimed are grossly inflated. She claims to have further records or information to dispute the hours claimed but as before she has not produced anything substantial to alter the findings of the delegate.

I conclude that the Director's delegate has accurately calculated the wages owing in accordance with my findings in the previous adjudication BC EST #D149/01 and therefore I conclude that the original determination should be varied to reflect these recalculated amounts.

## **ORDER**

I order, under Section 115 of the *Act*, that the determination dated 13 October 2000 is varied to determine that the amount owed is \$1,387.51 plus interest to date of payment.

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**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**