

**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-

Sharon Stewart  
("Stewart")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	C. L. Roberts
<b>FILE No.:</b>	98/501
<b>DATE OF HEARING:</b>	October 8, 1998
<b>DATE OF DECISION:</b>	October 14, 1998

## DECISION

### APPEARANCES

Sharon Stewart        On her own behalf  
Linda Wristen        On his own behalf

### OVERVIEW

This is an appeal by Sharon Stewart ("Stewart"), pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against Determination #084-691, issued by the Director of Employment Standards ("the Director") July 7, 1998. The Director's delegate found that Stewart owed Linda Wristen ("Wristen") \$410.44 in unpaid wages and interest.

### ISSUE TO BE DECIDED

The issue on appeal is whether the Director correctly determined that Wristen was entitled to payment of wages.

### FACTS

Wristen worked five days per week as a domestic for Stewart from September 1, 1996 through June 10, 1997, providing cooking, housekeeping and other personal services. Wristen lived at Stewart's residence during the period of employment, and was paid a total of \$1200.00 per month in addition to meals and accommodation.

Wristen was paid \$600.00 twice a month by way of automatic deposit from Stewart's account directly to Wristen's account. Payment commenced September 16, 1996. The last payment was made May 31, 1997. On two occasions, Wristen lived at the house while Stewart was away on personal business (December 22, 1996 - January 3, 1997, and January 22, 1997 - February 8, 1997). Her pay was not stopped for that period of time. Wristen took two weeks paid vacation in April, 1998.

Wristen quit on June 10. She was not paid for the days she worked in June.

The Director found that Wristen had "actually received benefits greater than her statutory entitlement at the time that the annual vacation was taken and paid..". However, he further determined that Stewart could not offset those overpayments against wages earned.

### ARGUMENT

Stewart did not provide me with any evidence to suggest that the Director's determination was in error. She argued that the Director's determination was wrong, as Wristen was "more than amply

compensated" for the work she had done. She contended that Wristen was overpaid holiday pay as she did not work for a 12 month period.

As I understood Stewart's argument, she suggests that it is unfair for Wristen to retain the amount overpaid.

Wristen acknowledges that Stewart did pay her holiday pay based on 12 months of work when she in fact only worked 8 months, but suggested that Stewart had plenty of time to advise her Trust Company that a deposit should not have been made. Further, she argued that at the time the money was paid, she fully intended to work for 12 months.

## **ANALYSIS**

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

Section 21 of the *Act* prohibits an employer from withholding wages for any reason:

(1) Except as permitted or required by this Act or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.

If an employer overpays an employee's wages, the overpayment may be deducted from future wage payments.

Wages is defined in the *Act* as

(a) salaries, commissions or money, paid or payable by an employer to an employee for work

...

In the case before me, the overpayment was in respect of statutory holiday pay, not wages. While the result may appear to unjustly enrich Wristen, I have no jurisdiction to interfere with the Determination on the basis of unfairness.

## **ORDER**

I Order, pursuant to Section 115 of the *Act*, that the Determination, dated July 7, 1998, together with whatever interest might have accrued since that date, be confirmed.

**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**