

An appeal

- by -

Pitura Enterprises Ltd.  
("Pitura")

- 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:** Cindy J. Lombard

**FILE No.:** 2002/445

**DATE OF DECISION:** October 23, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Pitura Enterprises Ltd. (“Pitura”) from a Determination of a Delegate of the Director of Employment Standards dated July 24, 2002, which found that:

1. Frederick Sandham (“Sandham”) was employed by Pitura from June 20, 2001, until November 11, 2001, at an hourly wage of \$17.00 per hour.
2. Work performed by Sandham on a paving project in Cherryville, British Columbia, between September 6, 2001 and September 29, 2001, was subject to the *Skills Development and Fair Wage Act* (“*Fair Wage Act*”) as confirmed by the Ministry of Transportation and therefore Sandham should have been paid \$21.20 per hour plus minimum benefits of \$4.00 per hour for work performed on that project when in fact Sandham was paid only \$17.00 per hour by Pitura.
3. Sandham was due overtime wages by Pitura at the appropriate rates specified by the *Act* and not at \$20.00 per hour which Pitura alleges was agreed to by Sandham as such an agreement, if it existed which is denied by Sandham, is of no effect as specified by Section 4 of the *Act*.

Accordingly, Pitura owes regular and overtime wages to Sandham in the amount of \$3,375.31 plus interest pursuant to Section 88 of the *Act* which at the date of the Determination totaled \$91.26 or a total of \$3,375.31.

### ISSUES TO BE DECIDED

1. Are wages owing by Pitura to Sandham for work performed on a project subject to the *Fair Wage Act*?
2. Are wages owed by Pitura to Sandham for overtime hours worked?

The Appellant, Pitura, bears the onus of establishing on a balance of probabilities that the Determination is wrong in fact or law (Section 108(2) of the *Act*).

### FACTS

1. **Are wages owing by Pitura to Sandham for work performed on a project subject to the *Fair Wage Act*?**

Sandham was employed by Pitura between June 30, 2001, and November 11, 2001.

Sandham kept copies of all of his daily time slips which include a note of the “customer”, “job site”, date, work performed and total hours worked and has provided them.

Pitura, despite repeated requests by the Delegate between February 27, 2002, and July 19, 2002, has never provided full production of payroll records including for the purpose of this appeal.

The Cherryville paving project was covered by the *Fair Wage Act* and accordingly Pitura is bound by legislation to pay Sandham \$21.20 per hour for hours worked at that project plus minimum benefits of \$4.00 per hour.

With respect to Pitura's claim that Sandham should not be paid for travel time for the Cherryville job (3 hours per day) but instead have stayed at the Cherryville site, according to Sandham, Mr. Pitura suggested that Sandham either take Mr. Pitura's old motorhome or rent a place, pay for it and he would pay him later. Sandham did not trust that he would be reimbursed by Pitura. It would have likely cost Pitura 3 hours wages a day for accommodation in any event and we therefore find that this ground of appeal is without merit.

**2. Are wages owed by Pitura to Sandham for overtime hours worked?**

Pitura claims that Sandham's hours submitted are fraudulent. Sandham kept copies of all time slips submitted during the time of his employment. There is no evidence whatsoever of fraud submitted by Pitura. The few time slips submitted by Pitura indicated that someone has crossed out the hours written by Sandham and substituted a different number.

In summary, Pitura has not satisfied its onus of proving that the Determination is wrong and the appeal is therefore dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, the Determination is confirmed.

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**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**