

An appeal

- by -

Friends Recycling Everything Everyway Co-operative operating as  
Good Neighbours Thrift Stores  
(the "Employer")

- 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:** Ib S. Petersen

**FILE No.:** 2002/460

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

## DECISION

### OVERVIEW

This an appeal by the Employer, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director issued on March 20, 2002. The Determination concluded that Mr. Ralph George was owed a total of \$586.41 by the Employer on account of overtime wages.

The Employer appealed the Determination and the Tribunal held a hearing on June 13, 2002. There was an issue of whether or not the Employer ought to be allowed to enter certain payroll records that had not been before the Delegate. In part, that may be because of the insolvency of the Employer. In any event, the Adjudicator allowed the records to be admitted and, while he accepted that overtime had been worked, he referred the calculation of the amount owed back to the Director. The terms of the referral back was set out as follows:

“When he was working an 8 hour regular day he would be entitled to one hour at time and one half. When he was working a 7.5 hour day he would be entitled to pay at straight time for the first one half hour and time and one half for the second one half hour.”

The Delegate issued her report of the referral back on August 28, 2002. In the report, she states that she based her decision on the Employer’s records and added one hour to each day Mr. George worked. The revised calculation indicates that the Employer owes \$3,173.06 including interest to Mr. George.

The Employer does not address, in any meaningful way, the referral back report and the calculations, *i.e.*, quantum. The Employer says that the Adjudicator erred in the manner in which he set out the facts and was biased. The Employer takes issue with the Adjudicator’s conclusion that Mr. George worked overtime that he was not paid for. Mr. Kueck says that Mr. George was paid for all hours reported by his supervisor. The Employer’s concern with respect to the Adjudicator’s decision is a matter for reconsideration. The letter from the Tribunal, requesting submissions from the parties with respect to the report, directed the parties to “specify your reasons for agreeing or disagreeing with the calculations made by the Director.” The Employer has failed to do that. In short, there is no merit to the Employer’s position and I am going to vary the Determination based on the calculations in the report.

### ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated March 20, 2002, be varied to reflect that the Employer owes Mr. George \$3,173.06 together with such interest as may have accrued.

---

**Ib S. Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**