

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 -

A.R.C. Accounts Recovery Corporation

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR:	John M. Orr
FILE No:	1999/324
DATE OF HEARING:	October 05, 1999 and November 15, 1999
DATE OF DECISION:	November 29, 1999

DECISION

APPEARANCES:

Peter Klassen, Esq. and Michael Arnold, Articled Student	Counsel for A.R.C. Accounts Recovery Corporation
Maurice Polard	President, A.R.C. Accounts Recovery Corporation
Edith Lavigne	On her own behalf
Gerry Omstead	Delegate of the Director

OVERVIEW

This is an appeal by A.R.C. Accounts Recovery Corporation ("ARC") pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination (No. 051189) dated May 05, 1999 by the Director of Employment Standards (the "Director").

ARC employed Edith Lavigne ("Lavigne") as a skip tracer from August 1996 to April 1998. When the employment ended Ms Lavigne made a claim for unpaid overtime wages. Following an investigation the delegate of the Director found, on the basis of a "time-clock" built into ARC's computer system, that Arc owed overtime wages to Lavigne in the amount of \$3,393.23.

ARC has appealed on the grounds that the Director's delegate was wrong to have used the computer time-clock as a basis for calculating hours of work but that a process known as the "time-lines" was more correct.

ISSUES TO BE DECIDED

The issue to be decided in this case is whether the Director made any error in using the computer time-clock as a proper basis for calculating hours of work.

THE FACTS AND ANALYSIS

This hearing continued through two full days of evidence, with extensive documentation, and submissions. There were several interim rulings which I said I would include in this decision but, in light of the outcome below, I have not.

There were several key points which emerged during the hearing and which I find as facts and where the onus is on the appellant to establish those facts I am satisfied that the appellant has met such onus:

1. Lavigne was employed on a monthly basis with regular hours which did not require a sign-in/sign-out process;
2. the employer (ARC) did not properly keep track of hours of work or overtime;
3. Lavigne did not keep contemporaneous records of her hours of work or overtime;
4. almost all of the work done by Lavigne was performed on a computer and the telephone;
5. the computer had an internal time-clock built into its software;
6. the computer time-clock was not used by either Lavigne or ARC as a means of keeping track of hours of work;
7. the computer time-clock was used, quite reasonably, by the Director's delegate as the only independent means of calculating the hours of work and overtime;
8. the computer time-clock was unreliable and in many cases egregiously in error because it depended on log-in and log-out procedures which were not necessarily done at the time of starting or finishing work (nor was it required to be done);
9. ARC was able, subsequent to the determination, to extract from their computers an analysis of all the daily transactions performed by Lavigne on the computer. This extraction, which was referred to as the "time-lines", was able to show the first and last computer transaction of each day performed by Lavigne;
10. the time-lines are a reasonably accurate measure of the "on-task" activities of Ms Lavigne but do not take into account other work related activities or the normal workplace arrival and departure activities;
11. the time-lines at least establish minimum hours worked.

As the above noted facts became apparent and reasonably established during the hearing ARC agreed that the time-lines themselves established overtime wages owing and unpaid to Ms Lavigne. While I concluded that the time-clock was not an accurate basis for calculation it was apparent that some overtime wages were owed.

Rather than refer this matter back to the Director to try to recalculate the wages owing the Parties were able to reach a consensus and conclusive agreement, and I now find as a fact, that Lavigne was owed for 105 hours @ \$16.19 per hour (base rate of \$10.79 x 1.5). This results in an amount owing of \$1700.00 plus holiday pay of \$68.00 and interest of \$32.00 for a total of \$1800.00. ARC agreed to pay this amount forthwith and Lavigne accepted this in full and final settlement of her claims against ARC.

ORDER

Pursuant to Section 115 of the *Act* I order that the Determination is varied to show that the Lavigne is entitled to \$1,700.00 plus holiday pay of \$68.00 and interest of \$32.00 for a total amount of \$1,800.00.

**JOHN M. ORR
ADJUDICATOR
EMPLOYMENT STANDARDS TRIBUNAL**