

An appeal

- by -

Valter Maciel  
("Maciel")

- 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:** April D. Katz

**FILE No.:** 2002/458

**DATE OF DECISION:** December 10, 2002

## DECISION

### OVERVIEW

Valter Marciel (“Marciel”) appealed a Determination which found that he was not entitled to additional compensation for wages, overtime wages, statutory holiday pay or length of service when his employment ended with CMI Concierge and Security Inc. (“CMI”). CMI gave Marciel working notice because of complaints from the developer. After Marciel brought his overtime to CMI’s attention they paid him a lump sum. After the Delegate of the Director of Employment Standards (“Director”) calculated the hours and overtime a further \$128.88 was found to be owing and CMI paid the outstanding amount to the Director for Marciel. The Director issued a Determination finding that no further money was owed to Marciel. Marciel has appealed on the basis that he believes additional money is owed to him.

This appeal proceeded by written submissions.

### ISSUE

Did the Director err in finding that no further money was owed to Marciel from CMI?

### ARGUMENT

In his appeal Marciel argued that CMI owed him \$547 for statutory holiday pay, \$956.40 for unpaid overtime and over \$1400 for meal breaks. Marciel disputes the Director’s Wage Calculation Summary on the basis that “no reasons are provided” for the calculations.

CMI argues that they paid Marciel for all his overtime and statutory holiday pay that was found to be owed to him. CMI argues that Marciel’s employment was terminated for misconduct after giving him written working notice. CMI paid Marciel for all the hours he worked and he was free to take meal breaks whenever circumstances permitted.

The Director’s Delegate argued that all the hours worked were entered into the Wage Calculation Summary program which calculates all overtime and statutory holiday pay. The difference between the amount paid and the amount earned was paid by CMI in full and no wages are owing.

### FACTS

Marciel was employed as an conceirge earning \$10 per hour from September 26, 1999 until March 16, 2000 when he was paid \$11 per hour until his employment ended on March 14, 2001. Marciel sometimes worked 9 to 11 hours in one day or for 6 or 7 days in a row. These facts were included in the Director’s analysis of Marciel’s claim for overtime and statutory holiday pay.

The Determination reviewed the employment record times and entered them into the computer program for calculation. The hours entered are consistent with the records submitted.

CMI paid all the amounts found to be owed to Marciel.

## **ANALYSIS**

The onus of proving the Director has erred is on the appellant in an appeal to the Tribunal.

The Appeal raised issues around the hours worked and computation of entitlement. The records of the Wage Calculation Summary are consistent with the records of hours worked. Marciel raised specific concerns about September 26, 1999 and June 16 to 30, 2000. From the records provided the summary has recorded the hours Marciel claimed.

The documentation provided with the appeal is the same as the material provided to the Director's Delegate. I could not find any discrepancy in the calculations.

## **CONCLUSION**

Based on the evidence provided there is no evidence to support the appeal. The Determination is therefore confirmed.

## **ORDER**

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated August 8, 2002 is confirmed.

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**April D. Katz**  
**Adjudicator**  
**Employment Standards Tribunal**