

An appeal

- by -

Celerity Capital Corp.,  
operating as Helmsman Apartments and Bayview Apartments  
(the "Appellant")

- 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.:** 2002/512

**DATE OF DECISION:** December 17, 2002

## DECISION

### OVERVIEW

This is an appeal, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination of the Director’s Delegate issued on September 19, 2002 (the “Determination”). In the Determination, the Delegate concluded that Mr. Russ Mundreon was an employee of the Appellant and was owed \$1,309.13 on account of wages for hours worked in December 2001.

The background facts may briefly be stated as follows. Mr. Mundreon performed maintenance work for the Appellant on two apartment buildings in Prince Rupert, British Columbia. His hourly rate was \$12.00. He submitted records of his hours to the Appellant from August to December 2001. Apart from the month of December, he was paid on the basis of the records submitted. The Appellant claimed that Mr. Mundreon owed him \$485.42 on account of a telephone bill.

### ANALYSIS

The Appellant has the burden to persuade me on the balance of probabilities that the Determination is wrong. Briefly put, I am of the view that it has not met that burden.

While the Appellant asserted before the Delegate that Mr. Mundreon was not an employee but worked on a “contract” basis, that is not an issue before me. In other words, employee status is not an issue in this appeal.

The Appellant says that the hours of work claimed was excessive and that it is willing to pay a lower amount agreed in settlement discussions with the Delegate.

The Delegate says that the Appellant has provided no evidence to support its contention that the hours worked was excessive. In any event, the argument rests entirely upon the Appellant’s view or opinion that the hours of work was excessive. The Delegate also says that a settlement was not reached for the lower amount because of a dispute over whether the amount of the telephone bill was to be included in the settlement amount.

There is no evidence before me to support that the hours worked was excessive. I note that Mr. Mundreon, in the past, *i.e.*, between August and November 2001, was paid on the basis of records submitted by him. While I can appreciate Mr. Davies’ opinion that the hours were excessive based on his “own experience,” that bald assertion does not assist the Appellant. The fact that Mr. Mundreon’s wife was hired as a temporary manager of the buildings and he was “hired to help out,” and that Mr. Davies was not present to supervise, are not, *per se*, indications that the hours were excessive.

I agree with the Delegate that a settlement was not reached because the parties could not agree on the question of whether the telephone bill was included in the settlement. If the parties did not agree, there is no settlement to be enforced.

In short, I am of the view that the Appellant has failed to discharge the burden to show that the Delegate erred and, therefore, the appeal fails.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determinations in this matter, dated September 19, 2002 be confirmed.

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