

BC EST # D564/98

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 -

Pipe-Eye Video Inspection & Services Ltd.
(“Pipe-Eye or employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Paul E. Love

FILE No.: 98/451

DATE OF DECISION: December 18, 1998

DECISION

This case involves a claim by two employees, Kevin Brownschlaigel, and Paul Stanley, that they were entitled to wages arising from their employment with Pipe-Eye. The employer appealed, from the Determination, which held that the employees were entitled to the sum of \$17,066.75. At the hearing which commenced on September 4, 1998, there was evidence presented by the employer, from which I could conclude that the Director's delegate erred in the Determination. As some of this information was produced recently by the employer, Mr. Stanley who was present, requested and I granted an adjournment so that he could consider and prepare cross-examination of the principal of the employer.

On September 27, 1998 when the hearing resumed, the Director's delegate appeared, as did Mr. Stanley and Mr. Brownschlaigel. Mr. Stanley and Mr. Brownschlaigel each chose to waive his right to cross-examine the employer. The Director's Delegate proceeded to cross-examine the employer. During that cross-examination the Delegate conceded that an error had been made, and requested that I refer the matter back to him for reconsideration. I did so in a letter decision dated September 28, 1998. The parties were given liberty to re-set this matter back before me to conclude the hearing.

At the request of the employer the hearing resumed on December 11, 1998. I was advised that the employer met with the Director's delegate, and that these parties reviewed the employers records.

As a result of that review, the parties agreed, by consent, that the employer was to pay Kevin Brownschlaigel the sum of \$208.63.

With respect to the employee, Paul Stanley, this matter is not by consent. Mr. Stanley did not appear at this hearing. According to the calculations presented by the Director's delegate the employer had overpaid Mr. Stanley. I am satisfied that an error was made by the Director's delegate, and that an overpayment was made by the employer to Mr. Stanley. I am also satisfied that as this is the third date for this hearing, a decision should be made without further delay. As a result of the submissions made, I am cancelling the Determination in this matter as it concerns Mr. Stanley.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter, dated August 19, 1998 in respect of Paul Stanley be cancelled. Pursuant to Section 115 of the *Act*, in respect of Mr. Brownschlaigel I order that the Determination be varied and that the employer pay to Mr. Brownschlaigel the sum of \$208.63.

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**Paul E. Love
Adjudicator
Employment Standards Tribunal**