

An appeal

- by -

Canadian Wax Works  
("CWW")

- 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:** Carol L. Roberts

**FILE No.:** 2001/585

**DATE OF DECISION:** October 22, 2001

## DECISION

This is a decision based on written submissions by Jack Lee, solicitor for Canadian Wax Works Ltd., Dale Shostal on his own behalf, and Debbie Sigurdson for the Director of Employment Standards.

### OVERVIEW

This is an appeal by Canadian Wax Works Ltd. ("CWW"), pursuant to Section 112 of the Employment Standards Act ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued July 23, 2001. The Director found that CWW contravened Sections 17(1), 18(1), 45 58(3) and 63(1) of the Act in failing to pay Dale Shostal ("Shostal") overtime wages, vacation pay, commissions and compensation for length of service, and Ordered that it pay \$5,178.62 to the Director on Shostal's behalf.

### ISSUE TO BE DECIDED

Whether the Director's delegate erred in concluding that Shostal was entitled to wages, vacation pay commissions and compensation for length of service.

### FACTS

The facts as set out by the Director's delegate are as follows.

Mr. Shostal worked for CWW, a local candle producing company, from July 31, 2000 to October 23, 2000, as a customer service representative. He was paid an hourly rate, which was increased on September 1, 2000, plus a commission on U.S. sales.

Mr. Shostal became upset with CWW when he was not being paid on a regular basis. He and Peter Keller, one of the principals of the company, had a dispute, following which Mr. Shostal advised Mr. Keller that he was going to Calgary, and that he would return to work in 7 to 10 days. He left Mr. Keller with a number where he could be contacted in Calgary. On Mr. Shostal's return to Vancouver, he had a telephone message from CWW asking that he return the office keys under the doormat. When Mr. Shostal did so, he found a cheque in the amount of \$750.00, payable to him, under the doormat.

CWW did not respond to the delegate's request for a reply to Mr. Shostal's allegations.

After an investigation into Mr. Shostal's complaint, and having regard to the information he provided in support of his claim, the delegate issued a Determination in favour of Mr. Shostal.

## ARGUMENT

CWW set out the following grounds as the basis for the appeal, filed August 14, 2001:

Appellant work as an agent to get clients which did not materialize.

CWW asked that the matter be sent back for further investigation, and indicated that "Explanation and documents in support to follow".

In a covering letter, Mr. Lee states as follows:

... the Director of CWW who was the active member of the Company, is and has been travelling in the Orient and we are unable to obtain firm instructions from him. As soon as we have the material we will certainly forward it on to you to support our client's appeal.

No additional documents were received.

The Director's delegate contends that CWW has provided no evidence in support of its claim that the delegate erred, and that the appeal should be dismissed. The delegate contends that CWW was given an opportunity to reply to the allegations and participate in the investigation, and failed to do so. After issuing a Determination, the delegate received a telephone call from Mr. Chung, one of the principals of the company. Mr. Chung advised her that CWW had ceased operations at the end of June, 2001, that he no longer lived at the address indicated on the corporate records, and had not taken steps to have his mail forwarded.

## ANALYSIS

The burden of establishing that the Determination is incorrect rests with an Appellant. Having reviewed the letter of appeal, I have no basis upon which to determine that the Director erred.

The delegate reviewed the evidence provided by Mr. Shostal, and afforded CWW an opportunity to respond. It did not do so. In the absence of any response from CWW, the delegate issued a determination in favour of Mr. Shostal.

Although an appeal was filed, it contains no evidence, or arguments in support of the grounds of appeal. Although it indicates that further submissions would follow, nothing further was received for over one month from the date the appeal was received.

CWW was aware of the Determination against it, and the deadline for an appeal. Although CWW's solicitor filed the appeal documents, the appeal was not perfected. No other information was provided, although he was provided with a letter from the Tribunal dated September 27, indicating that the matter would be sent to an Adjudicator. Nothing further was heard from CWW, its principals, or its solicitor.

I find that CWW has had full opportunity to respond to the allegations, and to file material in support of the appeal. As it has not done so, the appeal is dismissed.

**ORDER**

I Order, pursuant to Section 115 of the Act, that the Determination, dated July 23, 2001 be confirmed, together with whatever interest has accrued since the date of issuance.

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**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**