INTRODUCTION

On April 25, 1990, Petitioner JENNIFER MEADES filed a Petition to Determine Controversy pursuant to Labor Code §1700.44, alleging that Respondents BEST MODELS SAN FRANCISCO, INC., TALENT AGENCY and ELITE MODEL CENTER breached their contractual obligations by failing to pay the amounts owed for modeling work performed by Petitioner. A hearing was held on March 26, 1991 in San Francisco, California, before Miles E. Locker, the Labor Commissioner’s designated hearing officer. Petitioner JENNIFER MEADES was present. Tania Toporkov, an
administrator for Elite Model Center, was also present and represented both Respondents. The parties were given the opportunity to testify and present evidence. Based upon the testimony and evidence received, the Labor Commissioner adopts the following determination of controversy.

FINDINGS OF FACT

1. On December 2, 1988, Petitioner entered into a written contract with Respondent ELITE SAN FRANCISCO MODEL CENTER ("Elite") under which Petitioner agreed to pay specified tuition in order to receive training in professional modeling. Petitioner began her training with Elite on December 10, 1988 and graduated from the program in August, 1989.

2. As specified in Petitioner's written contract with Elite, Elite provides a modeling "placement service" for its trainees and requires its trainees to refrain from contracting with any modeling or talent agency that does not agree to pay Elite a fixed percentage of the trainee's modeling earnings for a fixed period of time.

3. Elite is not licensed by the Labor Commissioner as a talent agency.

4. Sometime after her graduation from Elite's training program, Petitioner was contacted by Mr. Chang, Elite's booker, and was asked to work at an upcoming fashion show. Petitioner accepted the assignment and modeled at the show, which was held in Elite's premises in September or October, 1989. The show was open to the public and was intended to promote Elite's training program. Petitioner and Mr. Chang had
never discussed the terms of compensation for modeling at this show.

5. Petitioner assumed she would be paid $40 for modeling at Elite's fashion show, pursuant to the terms of compensation set forth in a document entitled "Metamorphosis Placement Service (MPS) Rate sheet and Guidelines for Trainees and Graduates". The MPS Rate Sheet lists $40 as the standard compensation for an "informal" fashion show. Petitioner received this Rate Sheet from Elite's placement service, which operates under the Metamorphosis name, prior to her graduation from Elite's training program.

6. Petitioner never received any compensation for her modeling at Elite's fashion show. According to Elite's administrator, there is no budget for paying models who work at Elite's promotional fashion show; and it is expected that such models will work without compensation as a means of getting additional exposure.

7. Respondent BEST MODELS SAN FRANCISCO, INC., TALENT AGENCY ("Best") is licensed by the Labor Commissioner as a talent agency.

8. Mr. Chang, Elite's booker, also works as a booker for Best. Elite has an ongoing business relationship with Best under which Elite's graduates are referred to Best's Beginners Board for job placements. Best uses the MPS Rate Sheet as the basis for determining compensation for its models who obtain work through Best's Beginners Board.

9. In early November, 1989, Mr. Chang, acting on
behalf of Best, advised Petitioner to report for a job modeling for a client called "Extra! Extra!" The job was located in Pleasanton, 25 miles away from Petitioner's home. Mr. Chang informed Petitioner that the job would pay $12 an hour. Petitioner and Mr. Chang did not discuss whether she would be compensated for her travel expenses.

10. Barbara Martin, a representative of "Extra! Extra!", met with a group of Best models, including Petitioner, prior to the start of Petitioner's modeling job in Pleasanton. At this meeting, Ms. Martin told Petitioner to record her travel expenses on the daily invoices that Petitioner was required to submit to Best. These invoices are used by Best to determine the amount it must pay the model and the amount it will bill the client for the model's services. The client, "Extra! Extra!", pays Best directly, and Best then pays the model.

11. Petitioner modeled for the "Extra! Extra!" assignment from November 9, 1989 until December 24, 1989. She submitted 21 invoices for her work. Each invoice represented 4 hours of work, for a total $1,008 earned (84 hours work performed at $12 per hour). On each invoice, under the category entitled "travel", she listed her daily mileage between her residence and the assignment; however, she did not list any rate for this mileage because she was not sure what rate it would be compensated at. She now seeks a total of $51.75 reimbursement for her travel expenses based on approximately 50 miles driven each day of the assignment at the rate of five cents per mile.

12. Best disagrees that it owes any money for mileage
reimbursement. Petitioner never discussed mileage reimbursement with anyone other than Barbara Martin. According to Tania Toporkov, Martin never advised Best that "Extra! Extra!" had agreed to pay Petitioner's mileage; consequently, Best never billed "Extra! Extra!" for the mileage. Best also contends that because the MPS Rate Sheet provides that "all rates will be negotiated and finalized prior to booking", it cannot now be held responsible for a mileage reimbursement since the mileage rate was never negotiated or finalized.

13. Petitioner was never fully compensated for her "Extra! Extra!" assignment. She received two separate checks from Best in January, 1990, one for $192 and the other for $150, for a total of $342 that has been paid to her for this assignment. Best concedes that it still owes money to the Petitioner, but the parties disagree on the amount that is owed. Best asserts that it is entitled to deduct 20% of Petitioner's total earnings based on a clause in the MPS Rate Sheet, which provides that "for all graduates who are without an agent after Metamorphosis, MPS is available to them at a 20% service fee." Thus, Best contends that it is entitled to a $201.60 service fee from Petitioner (20% of the $1,008 earned on the "Extra! Extra! job), so that it now owes Petitioner only $464.40. In June, 1990, Best offered a $464.40 check to Petitioner as "payment in full". Petitioner refused to accept the check because she disputes that this amount constitutes full payment. She argues that Best is not entitled to the 20% service fee and thus, that she is still owed $666 in unpaid wages for the "Extra! Extra!"
assignment, plus $51.75 for mileage reimbursement as discussed above.

CONCLUSIONS OF LAW

1. There is no legitimate reason for Elite’s failure to pay Petitioner the $40 in dispute with respect to her modeling work at Elite’s fashion show. This is the amount that is listed on the MPS Rate Sheet as standard compensation for such an assignment. Petitioner never agreed to model at this show without compensation. Whether or not Elite budgeted the money for paying the models who work at its fashion show, such compensation must be made. Elite owes Petitioner $40 for this show, plus interest from October 31, 1989 to the present in the amount of $6; pursuant to Civil Code §§3287 and 3289, for a total of $46 owed.

2. Under Labor Code §2802, an employee is entitled to reimbursement for business expenses incurred by the employee on behalf of an employer. But mileage from an employee’s residence to the place of work is not considered a business expense for which reimbursement is mandatory. Here, Petitioner would be entitled to mileage reimbursement only if she had reached an agreement with Best on a specific mileage rate at the time of her acceptance of the "Extra! Extra!" assignment. Because of Petitioner’s failure to discuss mileage reimbursement for this job with anyone from Best, Petitioner is not entitled to reimbursement for her mileage.

3. Under the terms of the MPS Rate Sheet, Best is entitled to 20% of Petitioner’s earnings on the "Extra! Extra!"
job as a service fee. Despite Best's failure to promptly pay
Petitioner all of the money she earned for that job, Best is
still entitled to its 20% share of these earnings.

4. It is undisputed that Best still owes Petitioner
$464.40 for the "Extra! Extra!" assignment. This money should
have been paid to Petitioner over one year ago. Best did not
offer this money to Petitioner until June, 1990, and even then,
the fact that the offer was conditioned as "payment in full"
means that Petitioner was not obligated to then accept the
money. Consequently, Best now owes Petitioner $464.40 for the
"Extra! Extra!" assignment, plus interest from December 24, 1989
to the present, in the amount of $61.92, pursuant to Civil Code
§§3287 and 3289, for a total of $526.32 owed.

ORDER

It is, therefore, ordered that Elite pay $46 to
Petitioner and that Best pay $526.32 to Petitioner.

DATED: 4/30/91

MILES E. LOCKER, Attorney for
the Labor Commissioner

The above Determination is adopted by the Labor
Commissioner in its entirety.

DATED: 4/30/91

JAMES H. CURRY
Acting Labor Commissioner