

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-

Earls Restaurant (Nanaimo) Ltd.
("Earl's")

-of a Determination issued by-

The Director of Employment Standards
(the "Director")

ADJUDICATOR:	James Wolfgang
FILE NO.:	98/732
DATE OF HEARING:	January 29, 1999
DATE OF DECISION:	February 05, 1999

DECISION

APPEARANCES

Earl's Restaurant (Nanaimo) Ltd.	No appearance
Carlos Mayen	for himself

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the "Act") by Earl's Restaurant (Nanaimo) Ltd. (Earl's) of a Determination which was issued on October 28, 1998 by a delegate of the Director of Employment Standards (the "Director"). In that Determination the Director found Earl's owed Carlos Mayen (Mayen) \$1,545.62 as compensation for length of service. Earl's claim Carlos was discharged for just cause after several warnings.

Mayen had worked for Earl's for nearly four years and had been promoted several times to the position of Day Coach. Mayen worked in the kitchen area of the restaurant and was responsible for several other employees and the ordering of supplies for his shift. Mayen claims he had no signed warning slips on his record and he was discharged over a misunderstanding with another employee. The other employee is the wife of Scott Erwin, the Kitchen Chef who was Mayen's supervisor.

FACTS

The hearing was scheduled for January 29, 1999 commencing at 9:00 am. I am satisfied proper notice had been given to Earl's. At the scheduled start time Earl's had not appeared. The Tribunal confirmed no request for an adjournment had been made and no indication they would be unable to attend had been received from Earl's. The commencement of the hearing was delayed for 30 minutes, following which the hearing commenced in their absence.

The appeal is based entirely on challenges to the factual conclusions reached by the Director in making the Determination.

ANALYSIS

In an appeal to the Tribunal, particularly in an appeal challenging conclusions of fact made by the Director, the appellant bears the burden of demonstrating, on the balance of probabilities, that the conclusion of the Director was wrong. When the appellant fails to appear, that burden cannot be met and the appeal fails.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination of October 28, 1998 be confirmed.

James Wolfgang
Adjudicator
Employment Standards Tribunal