

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 -

D.V.H. CONTRACTING LTD.
(" DVH ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ian Lawson

FILE No.: 1999/693

DATE OF HEARING: January 12, 2000

DATE OF DECISION: January 21, 2000

DECISION

APPEARANCES:

For the Appellant:	Desiree Hartford
The Respondent:	Gwen McKay
For the Director of Employment Standards	No Appearance

OVERVIEW

This is an appeal by D.V.H. Contracting ("DVH") pursuant to s. 112 of *the Employment Standards Act* (the "Act"). The appeal is from a Determination issued by John Dafoe as a delegate of the Director of Employment Standards on September 29, 1999. The Determination required DVH to pay wages in the amount of \$1,711.99 to former employee Gwen McKay ("McKay"). DVH filed an appeal on October 21, 1999. An oral hearing was held at Stewart, B.C. on January 12, 2000.

FACTS

DVH employed McKay as a bookkeeper for approximately 10 years until her dismissal which she says was effective on April 30, 1998. McKay does not complain about the dismissal, and no issue has arisen about compensation for length of service. McKay seeks payment for wages for the last month of her employment. DVH alleges, *inter alia*, that McKay's employment terminated on March 30, 1998, that she did not perform any work during April 1998, and that she had already received payment of the wages in question.

ISSUE TO BE DECIDED

This appeal requires me to decide whether DVH owes one month's wages to McKay.

ANALYSIS

The president of DVH, Donald Vance Hartford, was not present at the appeal hearing. The only evidence presented on behalf of the appellant was argument given by Desiree Hartford, who was not privy to any of the employment dealings between DVH and McKay. The chief point made by the appellant is that McKay issued to herself a cheque in the amount of one month's wages on April 15, 1998. DVH therefore says she has already been paid for the month in question. McKay stated that for the 10 years of her employment, she had been paid a monthly salary two weeks in advance on the 15th of each month. The wages paid on April 15, 1998 were therefore wages for the month of March, and she had not received payment for April.

The issue had been raised before the Director's delegate, and DVH provided no evidence to cast doubt on the resulting Determination. In response to McKay's explanation of the April 15, 1998 payment, DVH could produce no documentation to establish the payment was anything but wages paid for the previous month's employment, and in fact had not examined DVH's initial payroll to determine whether McKay had been paid one month in arrears from the commencement of her employment. DVH's other allegations were also before the Director's delegate, and DVH did no more than repeat them at the oral hearing. DVH has failed to present any evidence or argument that casts doubt on the findings in the Determination, its appeal must be dismissed.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Mr. John Dafoe is correct and the appeal should be dismissed. Pursuant to s. 115 of the *Act*, I order that the Determination dated September 29, 1999 be confirmed, together with interest pursuant to section 88 of the *Act*.

Ian Lawson
Adjudicator
Employment Standards Tribunal