

**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-

Rai Singh Dadiala and Inderjit Kaur Dadiala  
operating as Amex Cabinet Manufacturing  
("Amex ")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

<b>ADJUDICATOR:</b>	C. L. Roberts
<b>FILE NO:</b>	98/877
<b>DATE OF DECISION:</b>	February 3, 1998

## DECISION

### OVERVIEW

This is an appeal by Rai Singh Dadiala and Inderjit Kaur Dadiala operating as Amex Cabinet Manufacturing ("Amex"), pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards ("the Director") issued November 7, 1998 . The Director found that Amex contravened Sections 17(1), 18(1), 18(2), 34(2), 40(1), 40(2), 45, 46(1) and 58(1) of the Act in failing to pay wages, overtime wages and vacation pay, and pursuant to Section 28 of the Act, Ordered that Amex pay \$3,913.01 to the Director on behalf of Jagtar Singh ("Singh") and \$8458.10 on behalf of Amarjit S. Dail ("Dail"), for a total amount of \$12,371.11.

This is a decision based on written submissions by Rai Dadiala, President of Amex Cabinet Manufacturing, and a written response from the Director's delegate.

Amex claims that that no wages are owing.

### ISSUE TO BE DECIDED

Did the Director's delegate correctly determine that Amex owed wages and vacation pay ?

### FACTS

Singh and Dail filed complaints with the Director regarding unpaid wages, and vacation and statutory holiday pay. Singh worked for Amex from September 13, 1996 to December 15, 1996. Dail worked for Amex from July 4, 1996 to October 20, 1996.

The Director's delegate investigated the complaints, and requested payroll records from Amex. Amex took the position that wages were not owed, and refused to provide payroll records or otherwise participate in the investigation.

Having no evidence from Amex, the Director's delegate relied on the evidence provided by Singh and Dail, and determined that they were entitled to wages as indicated above.

In his written submission, Dadiala contended that Dail was never employed as a foreman. He indicated that Dail owed him a large sum of money, and that he provided him with a place to stay, and assisted him with medical and legal problems. Dadiala also contended that Dail took money not belonging to him, and that Dadiala would be filing charges against him to recover that money.

Dadiala also stated that Singh worked for him as a subcontractor, and that he was paid for that work. Dadiala stated that Singh broke a marble countertop, and that \$1500.00 compensation was awarded to the customer for the loss. Dadiala indicated he would be pursuing this amount from Singh.

## ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

Section 28 of the *Employment Standards Act* provides that for each employee, the Employer must keep records of a number of matters, including

- (b) the date the employment began
- (d) the hours the employee worked on each day,
- (e) the benefits paid to the employee
- (f) the employees gross and net wages for each pay period, and
- (g) each deduction made from the employee's wages and the reason for it.

In addition, Section 85 provides that all records are to be provided to the Director when requested.

Amex neglected or refused to provide any records to the Director's delegate. The Director made a determination based on the evidence provided.

The written submissions on appeal do not address the findings of the Director's delegate, but state complaints about the employees. There was no dispute that Singh or Dail performed work for Amex, nor was there any dispute over the hours worked. While Amex indicated that Singh worked as a subcontractor, no evidence was provided to either the Director's delegate or on appeal supporting that assertion.

There being no evidence contradicting the findings in the Determination, I deny the appeal.

## ORDER

I order, pursuant to Section 115 of the *Act*, that the Determination, dated November 7, 1997 be confirmed, together with whatever further interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**