

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1995, C. 38*

- by -

Harjinder Singh Gill  
("Gill")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 96/617

**DATE OF HEARING:** January 21, 1997

**DATE OF DECISION:** January 28, 1997

**DECISION**

**OVERVIEW**

The appeal is by Harjinder Singh Gill (“Gill”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) against Determination # CDET 004164 of the Director of Employment Standards (the “Director”), a decision dated October 1, 1996. Chris Winkler and Chris Rivet were found to be employed by Gill operating as S & G Roofing and owed wages and vacation pay.

The appeal as filed was a claim that neither Winkler nor Rivet are owed moneys. Winkler was said to have been paid in full. Rivet is also said to be owed no moneys and it is said that Rivet was not Gill’s employee.

**APPEARANCES**

Harjinder Singh Gill	On his own behalf
Chris Rivet	On his own behalf
Chris Winkler	On his own behalf
Wayne Mackie	For the Director

**ISSUES TO BE DECIDED**

The first issue to decide is whether Gill was the employer of Rivet.

Beyond stating that he was not Rivet’s employer, Gill did not co-operate with the Director’s investigation. Should the Tribunal hear from him now on points that could have been raised with the Director’s delegate? If the answer is in the affirmative, there is a need to decide whether Rivet earned wages and vacation pay as the delegate has found and whether the cost of truck repairs can be deducted from Rivet’s pay.

No longer an issue is the matter of whether wages and vacation pay are owed Winkler. During the course of hearing from Gill, he accepted the obligation to pay Winkler \$631.11, the amount of the determination.

**FACTS**

An order for a truck driver was placed through a Canada Employment Centre by Harjinder Gill and as a result Chris Rivet began work on August 9, 1996. He quit on August 30, 1996.

Rivet’s complaint was assigned to the Director’s delegate handling Winkler’s complaint. Both men had named an S & G Roofing as their employer, Rivet adding Gill as well. Both gave 11957 River Road as the address of their employer.

In investigating Winkler's complaint, the Director's delegate visited the above River Road address, meeting Harjinder's brother, Jaswinder. Jaswinder was told of the complaint and said that he would ask his brother to check his payroll records. A number of letters were sent to Gill which advised him of the complaints of Winkler and Rivet. Gill was also sent a *Demand for Payroll Records* ordering him to produce the payroll records of Winkler by September 20, 1996. Gill's response was to telephone the Employment Standards Branch, twice, and leave a message that he employed neither Winkler nor Rivet and could not provide payroll records for them. In doing so, he left neither his name nor a telephone number at which he could be reached.

Believing Gill the caller, the delegate again wrote Gill. His letter, dated September 16, 1996, made note of both complaints, said that they were against a company that "goes by a variation of the name S & G Roofing", and advised Gill that he would be considered the employer unless the delegate was shown otherwise. Hearing nothing from Gill, the delegate issued his determination on October 1, 1996.

Canada Employment Centre records show that Winkler was dispatched to an S G Roofing as a result of an order by a person listed as Harjinder and that Rivet was dispatched to an S G Roofing through a separate order by Harjinder Gill. In appealing the Determination, it is said that Rivet was employed by S.G. Roofing Ltd., his father's bankrupt company, not S.G. Roofing (1994) Ltd., the company which has Gill as its director. Gill submits nothing in support of that.

On being asked why he did not respond to the last letter of the Director's delegate, Gill said he could not because "it is difficult to make appointments during work hours."

Gill says that no money is owed Rivet. Although he has no records to the contrary, he questions the basis for the delegate's calculations. In that regard he notes that they are based on what Rivet alone has had to say. Gill says that he cannot be trusted, that he was caught stealing and has threatened him.

Gill goes on to argue that Rivet is not entitled to further pay because of damage to a truck. Rivet is alleged to be responsible for a broken axle and "shattered" clutch, through bad driving.

## **ANALYSIS**

Rivet was employed by a business or undertaking of the Gill family, there is agreement on that. Gill says, however, that Rivet's employer was not himself, nor was it S & G Roofing or S.G. Roofing (1994) Ltd.: He says that Rivet was employed by his father's bankrupt company, S.G. Roofing Ltd.. But as matters are presented to me, there is no clear distinction between the businesses and undertakings, employees hired for one, end up working for another, as the case of Winkler clearly shows, and Gill has his hand in all. And I am presented with nothing which shows his father's company to be the employer. What I am shown, is that Gill's understanding of matters is rather confused if not plainly at odds with the facts.

In filing his appeal, Gill said that he did not employ Winkler and that Winkler was paid in full. But in appearing before me he presents an entirely different story. He now says that it was not S G

Roofing but himself that was Winkler's employer and now agrees that Winkler is owed wages and vacation pay. I cannot help but wonder if he could not be similarly wrong on the nature of Rivet's employment.

Gill submits no evidence which shows that the Director's delegate is wrong in concluding that Gill is the employer. Indeed, on hearing from Gill, I find myself in agreement with the Director's delegate, the evidence points to Gill as Rivet's employer. Rivet was led to believe that he was working for an S & G Roofing and for Gill. Gill placed the order through Employment Canada which led to the hiring of Rivet and Gill directed his work. He is familiar with the details of Rivet's employment, his advance and problems with the truck which he drove. And Gill admits to employing people directly. All that points to Gill as the employer while there is only an Employment Canada record suggesting otherwise, it pointing as it does to the two S. G. Roofing companies as employer. No weight can be attached to that given that the order for Winkler also lists S G Roofing as the employer and Winkler ended up working for Gill directly.

I now turn to the other matters raised by Gill's appeal, in particular, the matter of whether the Tribunal should hear from him now on the matter of the amount of the determination and deductions for truck repairs. It is my conclusion that it should not.

While there is no bar to the Tribunal's acceptance of new evidence, the Tribunal cannot allow itself to be used for the making of cases that could have been, indeed, **should** have been made to the Director's delegate, given no reasonable explanation for the failure to co-operate with the Director. As another Adjudicator dealing with a discharge matter has put it, appellants cannot be allowed "to 'sit in the weeds', failing or refusing to co-operate with the delegate in providing reason for the termination of an employee and later filing appeals of the Determination when they disagree with it" [*Tri-West Tractor Ltd.* (1996) BCEST #D268/96].

Gill speaks of how difficult it is to make appointments during working hours. I agree that it is not always an easy thing to do but it is far from impossible and is expected of people and businesses. I see no reason for Gill's failure to co-operate with the delegate in any meaningful way. Gill received a Demand for Payroll Records and several letters, chose not respond to them, and is now unable to offer a reasonable explanation for his lack of a response. That leads me to conclude that there is no reason to hear from him now in regard to truck repairs and on the total amount owed. His appeal is dismissed.

## **ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 004164 be confirmed.

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**Lorne D. Collingwood**

**Adjudicator  
Employment Standards Tribunal**

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