

An appeal

- by -

DBD Westcoast Construction Ltd.  
("Employer")

– of a Determination issued by –

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

and

An application for suspension

- by -

DBD Westcoast Construction Ltd.  
("Employer")

– of a Determination issued by –

The Director of Employment Standards  
(the "Director")

Pursuant to section 113 of the  
*Employment Standards Act* R.S.B.C. 1996, C. 113 (as amended)

**TRIBUNAL MEMBER:** Sheldon M. Seigel

**FILE No.:** 2010A/43 & 2010A/44

**DATE OF DECISION:** June 17, 2010

## DECISION

### SUBMISSIONS

John Ramos on behalf of DBD Westcoast Construction Ltd.  
Andres Barker on behalf of the Director of Employment Standards

### OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by DBD Westcoast Construction Ltd. (the “Employer”), of a Determination that was issued on February 16, 2010, by a delegate of the Director of Employment Standards (the “Director”). The Determination found that the Employer had contravened sections 18, 40, and 58 of the *Act* in respect of the employment of Ayman Madanat (the “Employee”), and ordered the Employer to pay to the Employee the amount of \$2,256.80. This amount included wages, overtime, annual vacation pay, and accrued interest (s.88 of the *Act*).
2. The Director also imposed administrative penalties on the Employer under Section 29(1) of the *Employment Standard Regulation* (“*Regulation*”) in the amount of \$1,000 relating to sections 18 and 46 of the *Act*.
3. The Employer seeks a cancellation of the Determination on the grounds that the Director failed to observe the principles of natural justice in making the Determination.
4. The Employer also seeks a suspension of the Determination pending the outcome of the appeal.

### ISSUES

5. Did the Director fail to observe the principles of natural justice in making the determination? In particular, did the absence of the Employer at the hearing amount to a breach of the obligation to provide a party with an opportunity to be heard or present its case?
6. Should the effect of the Determination be suspended pending resolution of the appeal pursuant to s. 113 of the *Act*?

### ARGUMENT

7. The Employer claims that he was not able to attend the hearing on the assigned date because he had to be in provincial court concurrently with the hearing, and also that his office manager did not inform him of the date of the hearing due to circumstances outside of his control. He would like to have his *viva voce* evidence heard and considered before a final determination is made.
8. The Director submits that all of the arguments contained in the Employer’s appeal submissions were available at the time of the investigation leading up to the Determination. Those include the Employer’s written response to the complaint, and an affidavit concerning the Employer’s absence from the hearing. The Director says that the Determination effectively addresses all of these arguments.
9. As for the Employer’s non-involvement with the hearing of December 22, 2009, the Director confirms that the Employer did not participate. The Director indicates that the Employer did attend the Employment

Standards Branch for a mediation session on November 22, 2009, and signed a receipt for a notice of hearing on November 30, 2009. Further the Director called the Employer on the morning of the scheduled hearing, adjourned the hearing for 30 minutes to await the Employer, and then called the Employer one more time before proceeding without him. The Director submits that reasonable efforts were made to provide the Employer an opportunity to respond to the complaint.

## ANALYSIS

10. The Employer claims in its appeal that he was both unable to attend the hearing and was not reminded of the hearing by his office manager. The appeal documents do not set out the evidence he would have led had he participated in the hearing. Neither the appeal nor the affidavit he provided to the Director prior to the publication of the Determination has supporting or corroborating evidence concerning his inability to attend the hearing. The Employer did however receive and sign for a notice of the hearing date. The Director considers this and concludes that the prejudice to the Employee in re-convening a second hearing would be greater than the prejudice to the Employer by not so doing. Given that the Employer has not provided any new information or an indication that there is any evidence other than that which he provided in documentary form prior to the hearing, I support the Director's conclusion.
11. The Determination documents the Director's weighing and assessment of credibility of the evidence provided by the Employer in writing and the employee during the hearing. The Director considered the Employer's written answer and supporting documentation relating to the complaint in evidence. I note that the Employer's evidence does confirm that he did not pay the Employee in full for the time worked. The Employer claims it was because of substandard work.
12. I accept the Director's conclusions that an employer/employee relationship existed and that the Employer did not pay the Employee in accordance with the *Act*.
13. I find that there was no breach of natural justice occasioned by the Employer's failure to attend the hearing. The appeal fails.
14. In light of my decision on this appeal, the request under section 113 of the *Act* for a suspension of the effect of the Determination is moot and need not be decided.

## ORDER

15. Pursuant to section 115 of the *Act*, I order the Determination dated February 16, 2010, be confirmed.

---

**Sheldon M. Seigel**  
**Member**  
**Employment Standards Tribunal**