

**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 -

Surinder Pal Gosal and Nirmal Singh Gosal operating as  
Nanaimo Airporter, Coast Limousine and Ferry Shuttle Service  
(the “Employer”)

- of a Determination issued by -

The Director Of Employment Standards  
(the “Director”)

<b>ADJUDICATOR:</b>	Ib S. Petersen
<b>FILE NO.:</b>	97/912
<b>DECISION DATE:</b>	February 19, 1998

## DECISION

### APPEARANCES/SUBMISSIONS

Mr. Surinder Pal Gosal Mr. Nirmal Singh Gosal	on behalf of the Employer
Ms. Lenore St.Hilaire	on behalf of the Complainant
Mr. Ian MacNeil	on behalf of the Director of Employment Standards

### OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on December 4, 1997 which found that Ms. St.Hilaire was an employee of the Employer and entitled to \$1,349.96 on account of wages, vacation pay, statutory holiday pay, compensation for length of service, and for money deducted from her wages without authorization.

The Employer claims that the Determination is wrong.

### ISSUE TO BE DECIDED

The issue is whether the Determination should be varied, confirmed or cancelled when the Employer refused to participate in the investigation.

### FACTS

On August 6, 1997, the Employment Standards Branch received a complaint from an Ms. St.Hilaire. She had been driving vehicles operated by Ferry Shuttle Service, Coast Limousine and Nanaimo Airporter since January 12, 1997, and was paid on a commission basis, *i.e.*, on the revenue received in respect of those vehicles. Ferry Shuttle Service, Coast Limousine and Nanaimo Airporter are operated by Mr. Surinder Gosal and Mr. Nirmal Gosal. Based on the information received from Ms. St.Hilaire, the Director’s delegate determined that Ms. Hilaire was an employee and entitled to \$1,349.96 on account of wages, vacation pay, statutory holiday pay, compensation for length of service, and for money deducted from her wages without authorization in contravention of miscellaneous provisions of the *Act*:

In the Determination, the Director's delegate observed that the Employer refused to participate in the investigation:

“The Employers, Surinder Pal Gosal and Nirmal Singh Gosal, have not responded to my numerous attempts to contact them to discuss this complaint. My attempts started during the last week of September 1997 with telephone calls to their residence, were followed by letters dated October 2, 24 and 27, 1997. A Demand for Employer Records was issued November 6, 1997, and sent to their addresses by Certified Mail. The letter was delivered to the address and signed for on November 12, 1997. The Demand required the Employer to produce all payroll records and time records kept for Ms. St.Hilaire to our office on November 14, 1997. The Employer did not respond to this Demand.”

The submission from the Director's delegate states that he only had one brief conversation with Mr. Surinder Pal Gosal on December 12, 1997 and that “all of my requests for a response to this complaint and for the production of records have been ignored”.

The Employer does not dispute this.

## **ANALYSIS**

I agree with my colleagues in *Kaiser Stables*, BCEST #D058/97, and numerous other cases, that the Tribunal will not allow an appellant who refuses to participate in the Director's investigation, to file an appeal on the merits of the Determination. The Employer now raises issues such as the employment status of Ms. St.Hilaire, and the identity of the employer. These issues could have been addressed during the investigation. In my view, the Employer refused to participate in the investigation and I will not allow the Employer to raise these issues at this stage. In the result, the appeal must fail.

## **ORDER**

Pursuant to Section 115 of the Act, I order that the Determinations in this matter, dated December 4, 1997 be confirmed together with such interest as may have accrued, pursuant to Section 88 of the Act, since the date of issuance.

**Ib Skov Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**