

An appeal

- by -

Steve B. Kelly

- 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

**TRIBUNAL MEMBER:** John M. Orr

**FILE No.:** 2004A/17

**DATE OF DECISION:** May 3, 2004

## DECISION

### SUBMISSIONS

Steve Kelly

On his own behalf

### OVERVIEW

This is an appeal by Steve Kelly (“Kelly”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated January 9, 2004 by the Director of Employment Standards (the “Director”).

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

Steve Kelly was employed by The International Knitwear Design Group (“the Employer”) and filed a complaint alleging that the Employer had failed to pay wages as required by the *Act*. The Director’s delegate investigated the matter and in the course of that investigation held a *viva voce* hearing on September 11 and October 16, 2003.

The Director’s delegate determined that the Employer owed wages to Kelly in the amount of \$2,759.48. Kelly has appealed that determination on the grounds that “the Director failed to observe the principles of natural justice in making the determination”. The substance of the appeal is that the delegate misinterpreted the evidence and came to wrong conclusions, or miscalculated, the amount of wages owing. Kelly believes he is owed substantially more wages than was determined.

### ISSUE

The issue in this case is whether the appellant has raised issues that amount to a breach of natural justice that would persuade the Tribunal to vary the Determination.

### ANALYSIS

While Kelly has framed his appeal as based on a breach of the principles of natural justice he has not identified any such principles that were breached by the Director’s delegate. It is apparent that the delegate gave the parties a full and fair opportunity to present their case and rendered a fair and reasonable decision.

The substance of Kelly’s appeal is that he disagrees with some of the factual findings made by the delegate. He argues that his hours worked have been miscalculated. However the delegate points out that Kelly did not present any documentary evidence of his hours worked and the findings had to be based on a reasonable analysis of the records that were produced and the submissions made by the parties at the hearing.

Errors of fact may in some circumstances be reviewable by the Tribunal but in this case I find that the delegate made fair and reasonable findings of fact based on the evidence provided to her by the parties. The parties were given a reasonable opportunity to make their presentations to the delegate in writing and in person. I am not satisfied that Kelly has established any reviewable error in this case.

An appeal to the Tribunal is not a re-investigation of the complaint or an opportunity to re-argue the case. In this case the delegate conducted an investigation and conducted an oral hearing in which the parties had a full and fair opportunity to present evidence and make submissions. There was ample evidentiary foundation for the findings of fact made by the delegate and the delegate gave reasonable reasons for her findings. The Tribunal will not substitute its findings of fact for that of the Director without some substantial reason to do so. In this case the delegate's findings were based on a thorough investigation, sworn evidence and a reasonable analysis of the evidence.

In conclusion, I am not persuaded that there was a failure to observe the principles of natural justice or that the Director's delegate erred in law or substantial errors of fact in making the Determination. Accordingly, the Determination is confirmed.

## **ORDER**

I order, under section 115 of the *Act*, that the Determination herein dated January 9, 2004 is confirmed.

---

**John M. Orr**  
**Member**  
**Employment Standards Tribunal**