



An appeal

- by -

John Cottam and Oliver Cottam and John Cottam o/a Dakota Transportation Services and Oliver Cottam o/a Dakota Transportation Services and John and Oliver Cottam o/a Dakota Transportation Services

("Dakota")

- 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

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2000/798

**DATE OF DECISION:** February 12, 2001

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by John Cottam and Oliver Cottam, John Cottam o/a Dakota Transportation Services, Oliver Cottam o/a Dakota Transportation Services and John and Oliver Cottam o/a Dakota Transportation Services (“Dakota”) of a Determination that was issued on November 16, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Dakota had contravened Part 3, Sections 17, 27 and 28 and Part 4, Section 40 of the *Act* in respect of the employment of Robert Pepler (“Pepler”) and ordered Dakota to cease contravening and to comply with the *Act* and to pay an amount of \$4,332.02.

In the appeal, which was filed over the signature of John Cottam, Dakota says, “Our company does not know anything about this matter”. Implicit in the appeal is the assertion that Pepler might have worked 25 hours for Dakota and was not paid for that work and the Director was wrong to conclude there was more than that owing to Pepler.

### ISSUE

The issue is whether Dakota has shown there is any error in the Determination such that the Tribunal should vary or cancel it.

### FACTS

The Determination sets out the following findings of facts:

Oliver Cottam claimed that the employee only worked from October 16 to the 28<sup>th</sup>. When confronted with evidence which placed Mr. Pepler driving for him in September, Mr. Cottam denied same, claiming it was a different driver. Subsequently, Mr. Cottam acknowledged Mr. Pepler driving in September, but claimed it was under contract.

Oliver Cottam supplied a list of hours from which he claimed were for October 16 to the 28<sup>th</sup>. The hours were obviously altered and the date recorded appeared to have been added at a later time.

Oliver Cottam advised that he had copies of cheques paid to Mr. Pepler.

Oliver Cottam was served with a Demand for Records on October 31, 2000 for all employees. Mr. Cottam advised that he has no records other than the cheques. Mr. Cottam has not produced the cheques.

Oliver Cottam advised that he had no other employees. On November 1, 2000 John Cottam was spoken to advising Dakota Transport Services was his and Oliver's business. John Cottam acknowledged an employee present at the time and indicated this employee was being paid on a regular basis.

Mr. Pepler has supplied a calendar indicating hours worked for the employer. Mr. Pepler claims the hours were recorded on a daily basis. Additionally, Mr. Pepler has supplied the drivers daily log books.

Mr. Pepler claims that he received a total of \$2,390.00 in cash and cheques in September and October.

Later, the Determination notes that "Mr. Cottam has failed to supply records as required to be kept as per Section 28 of the *Act* and as demanded".

## **ARGUMENT AND ANALYSIS**

The burden in this appeal is on Dakota to show there is an error in the Determination that demands intervention by the Tribunal. This appeal, in the context of matters that are relevant to the Determination, does little more than restate the position Dakota took during the investigation, a position which was not accepted by the investigating officer, and does nothing to affect the validity of the Determination or its factual foundation. The reasons for not accepting the position of Dakota are set out in the Determination. Dakota has not shown that reasoning to be wrong or otherwise flawed and, as a consequence, has not met their burden.

The submissions made by Dakota on the appeal also include allegations which, if valid, would raise concerns about whether there was a denial of natural justice during the investigation. However, the allegations, that the investigating officer failed to provide them with any information about the complaint are, in fact without foundation and are entirely discounted by the material filed by the Director in reply to the appeal. In the final analysis, Dakota has not established there are any circumstances which raise a concern that the manner in which this investigation was conducted was a breach of the rules of natural justice or denied Dakota a reasonable opportunity to reply to the complaint.

The appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated November 16, 2000 be confirmed in the amount of \$4,332.02, together with any interest that has accrued pursuant to Section 88 of the *Act*.

**DAVID B. STEVENSON**

**David B. Stevenson  
Adjudicator  
Employment Standards Tribunal**