

An appeal

- by -

A-Class Doors & Mouldings Ltd.

- 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)

TRIBUNAL MEMBER: John M. Orr

FILE No.: 2006A/46

DATE OF DECISION: July 5, 2006

7. However, on April 5, 2006, following receipt of the appeal, the Director issued a variation of the original determination to correct the error pointed out by A-Class. The amount of wages owing was reduced from \$2,500.00 to \$1,500.00 and the vacation pay and interest was also adjusted accordingly.
8. Section 86. (1) of the *Act* permits the Director to vary or cancel a Determination within 30 days of receipt of the appeal. In this case the variation was done within that time frame. This variation responded to and corrected one of the issues in the appeal. Accordingly, the remaining ground of appeal is that A-Class has new evidence that was not available at the time the determination was being made.
9. When the appeal was filed A-Class provided no new evidence to support the allegations of fraud but indicated that they would be providing it. The appeal was filed on March 31, 2006, which was the last day to file an appeal. At that time A-Class stated they may file further submissions. No further documentation was provided. On May 15, 2006 the Tribunal invited A-Class to make a final reply to the delegate's response to the appeal. On the last day to reply, A-Class requested and was granted an extension of time. A-Class claimed they would have all the relevant documentation by June 1, 2006. Still no documentation was provided. Then on June 1, 2006 A-Class asked for a further extension for the same reason. By letter dated June 2, 2006 the Tribunal declined to grant any further extensions of time and the file was assigned for decision.
10. During the original investigation A-Class alleged that Despot was not employed by them. Following the investigation the delegate determined that there was sufficient evidence to establish that Despot was indeed an employee. A-Class has not produced any evidence to contradict this finding. Although A-Class made allegations of fraud no evidence of such fraud has been produced. A-Class has not demonstrated that there is any new evidence that was not available at the time of the determination. Accordingly this appeal must be dismissed and the Determination confirmed.

ORDER

11. I order, under section 115 of the *Act*, that the Determination herein is confirmed.

John M. Orr
Member
Employment Standards Tribunal