

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





DECISION

SUBMISSIONS

Jason Sandhu on behalf of A-Class Doors & Mouldings Ltd.

Ravi Sandhu on behalf of the Director of Employment Standards

OVERVIEW

- This is an appeal by A-Class Doors & Mouldings ("A-Class" or "the employer") pursuant to S.112 of the *Employment Standards Act* ("the *Act*") from a Determination dated February 21, 2006 issued by the Director of Employment Standards ("the Director"). The Determination found that A-Class had failed to pay wages to Slobodan Despot ("Despot") in the amount of \$2,500.00 plus vacation pay and interest. The Determination also imposed two penalties in the amount of \$500.00 each.
- A-Class has appealed the Determination on two grounds. Firstly, A-Class alleges that there is 'new evidence' that was not available at the time of the hearing. The evidence allegedly is that Despot conspired with another person to commit fraud on A-Class in relation to the claim for wages. Secondly, A-Class points out an error on the face of the Determination as the delegate had found that \$1,000.00 of the wages owed had already been paid but did not deduct this amount from the total wages.
- 3. A-Class did not appeal the penalty determinations.
- In the exercise of its authority under section 103 of the *Act*, which incorporates section 36 of the *Administrative Tribunals 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.

ANALYSIS

- Section 112 of the *Act* provides that a person served with a determination may appeal the determination to the Tribunal on the following three grounds:
 - (a) the director erred in law;
 - (b) the director failed to observe the principles of natural justice in making the determination;
 - (c) evidence has become available that was not available at the time the determination was being made.
- The appeal filed by A- Class falls within these terms of reference in that A-Class is alleging that evidence has become available that was not available at the time the determination was being made and claims that there was an error on the face of the record, which is an error in law.

- 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.
- 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

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

John M. Orr Member Employment Standards Tribunal