

**EMPLOYMENT STANDARDS TRIBUNAL**  
In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1996, C.113*

- by -

Brad Bryant Petroleum Ltd.  
("Bryant")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 1998/780

**DATE OF HEARING:** February 26, 1999

**DATE OF DECISION:** April 7, 1999



number of occasions by helping out with various household goods at the time that Shields “broke up” with his girlfriend.

Bryant further stated that during the conversation with Shields on the evening of May 28, Shields said “just because you have problems with me at work , don’t take it out on my daughter.”

Bryant finally stated that there was no formal discipline issued to Shields about “temper incidents” although it was discussed with Shields.

Bryant confirmed in his testimony that the new information provided on appeal was available at the time of the investigation but, as they “felt sufficient information had been provided to support the dismissal” of Shields, they “did not feel it was necessary to dig up ancient history in order to justify it (dismissal)”

### **ISSUE TO BE DECIDED**

Bryant acknowledges that it did not provide all the information available to the delegate of the director prior to the Determination being issued. Is Bryant entitled to introduce evidence in appeal that it did not provide to the delegate of the Director during the investigation ?

### **ANALYSIS**

I begin with a review of the adjudicative process arising from the filing of a complaint. *BWI Business World Incorporated* BC EST #D050/96 discusses the basis on which the Tribunal finds the Director’s investigation and determination to be quasi-judicial:

Once a complaint has been filed, the Director has both an investigative and an adjudicative role. When investigating a complaint, the Director is specifically directed to give the “person under investigation” (in virtually every case, the employer) “an opportunity to respond.” (Section 77) At the investigative stage, the Director must, subject to section 76(2), enquire into the complaint, receive submissions from the parties, and ultimately make a decision that effects the rights and interests of both the employer and the employee. In my view, the Director is acting in a quasi-judicial capacity when conducting investigations and making determinations under the *Act*. [Cf. *Re: Downing and Graydon* 21 O.R. (2d) 292 (Ont. C.A. )]

The decision making process was quasi-judicial in the case before me. Bryant was given opportunity to make submissions to the delegate of the Director. Bryant, for their own reasons, chose not to provide certain information to the delegate of the Director.

The Tribunal has addressed similar situations in *Tri-West Tractor Ltd.* **BC EST No. D268/96**, *Kaiser Stables Ltd.* **BC EST No. DO58/97** and numerous other cases since that point in time. The Employer did not submit certain information to the delegate of the Director during the delegates' inquiry. On appeal, it sought to rely upon that information. Most relevant to this case, however, the Tribunal would not allow an appellant who failed to provide information to the delegate of the Director during the investigation, to file an appeal on the merits of the determination. To grant standing on appeal would be entirely at odds with the quasi-judicial nature of the investigation and determination.

Bryant chose to not provide certain information to the delegate of the Director during the investigation. It now seeks to challenge the delegate of the Director's determination with that information it acknowledges it did not previously provide. The Tribunal will not allow that to occur. As reviewed *BWI Business World Incorporated*, *Tri-West Tractor Ltd.* and *Kaiser Stables Ltd.*, the Tribunal will not allow an employer to either completely ignore the determination's investigation or to withhold certain information and then appeal the determination's conclusions.

Bryant's failure to provide all information during the investigation is significant. The Determination, however, must still explain the basis of its conclusions.

I have considered the written and oral evidence provided with respect to the conclusions reached by the delegate of the Director and set forth in the Determination. I am satisfied that while the telephone calls to the employer's residence were perhaps ill advised and inappropriate, they did not arise out of the employment relationship and were not work related. There was no evidence provided of any previous discipline in regard to Shields. The evidence was that Shields had only worked intermittently since being laid off March 31, 1998 and did not work after May 23, 1998 until he was terminated on May 29, 1998.

I am satisfied that the Determination clearly sets forth the information considered and the reasoning for the conclusions reached.

I conclude that Bryant has not discharged its onus of establishing "just cause" existed for the dismissal of Shields.

In the above circumstances, the appeal by Bryant is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated November 30, 1998 be confirmed as issued in the amount of 1,623.60 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**