

An appeal

- by -

Halo Project Development Corporation

- 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/41

**DATE OF DECISION:** May 21, 2004

## DECISION

### SUBMISSIONS

Daniel Braconnier

On behalf of Halo Project Development Corporation

Robert G. Turner

Delegate on behalf of the Director

### OVERVIEW

This is an appeal by Halo Project Development Corporation (“Halo”) pursuant to Section 112 of the Employment Standards Act (the "*Act*") from a Determination dated February 13, 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.

Howard Mazor (“Mazor”) was employed by Halo to do construction work on a chalet at Big White 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 determined that Halo was in contravention of the *Act* and had failed to pay wages owed to Mazor in the amount of \$1,635.60 (plus interest) and also imposed an administrative penalty.

Halo has appealed alleging that evidence has become available that was not available at the time the Determination was being made. No submission is made appealing the administrative penalties

### ISSUE

The issue in this case is whether the appellant has raised a reasonable basis for the admission of new evidence that would warrant cancellation of the determination or a referral back to the Director.

### ANALYSIS

I am not satisfied that there is any new evidence to be admitted. Halo firstly raises a completely new basis for the payment of wages (payment on a per square foot basis as opposed to an hourly rate) but there is nothing in the submission that could not have been submitted to the Director during the course of the investigation. There is no explanation as to why this position was not presented during the course of the investigation. Accordingly, I find that this is not “new” evidence that should be admitted at this stage in the proceedings.

Halo also says that the reasons for Mazor’s departure were due to poor workmanship and damage to the site. This is irrelevant to the proper payment of wages as required by the Act. This is not a defence to failure to pay appropriate wages.

The other issue raised by Halo is that there is evidence including a cancelled cheque to show that Mazor was paid the wages. This issue was raised with the delegate and was carefully considered and rejected by the delegate.

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 a thorough investigation during 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 his 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 and a reasonable analysis of the evidence.

In conclusion, I am not persuaded that there is any new evidence to be considered or that the Director's delegate erred in law or failed to observe the principles of natural justice in making the Determination. Accordingly, the Determination is confirmed.

## **ORDER**

I order, under section 115 of the *Act*, that the Determination herein dated February 13, 2004 is confirmed.

---

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