

BC EST #D096/99

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

542015 B.C. Ltd. also known as Perry Rink Construction
("employer")

of a Determination issued by

The Director of Employment Standards

(the "Director")

ADJUDICATOR: Paul E. Love

FILE NO.: 98/761

DATE OF DECISION: March 30, 1999

DECISION

OVERVIEW

This is an appeal by the employer, from a Determination dated November 9, 1998 which found that Joseph Boudrea was entitled to wages in the amount of \$3,810.54. The Determination was confirmed.

ISSUE TO BE DECIDED

Is there any basis for disturbing the findings of the Delegate?

FACTS

The employee, Joseph Boudreau, submitted to the Director's Delegate a record of hours worked, and a record of payments made, demonstrating to the Delegate that he was employed by the employer from April 21, to September 26, 1997. He established that he was unpaid for the period August 29, 1997 to September 27, 1997.

The employer took the position that Mr. Boudreau was paid fully. The employer initially provided to the Delegate records showing wages were earned but not paid. The employer then removed those records from the file and took the position that Boudreau had not identified properly the employer as 542015 BC Ltd. and thus Boudreau's complaint was invalid. The employer further argued that because the investigation continued more than 6 months after the initial complaint the Director had no jurisdiction. The employer further argued that Boudreau had claimed more hours than he worked.

The employer declined to provide any evidence to the Delegate supporting his view that Mr. Boudreau was paid fully. He also provided no evidence to the Delegate supporting his assertion that Mr. Boudreau had not worked the hours claimed.

In the absence of records supplied by the employer, the Delegate made use of the material supplied by the employee, and made a conservative estimate of the overtime hours. The Delegate determined that the sum of \$3,810.54 was due and owing by the employer to Mr. Boudreau.

ANALYSIS

The burden rests, in this case, with the employer to demonstrate an error in the Determination such that I should vary or cancel the Determination. This Tribunal has stated in the past that it will not permit an appellant to lie in the weeds, that is to fail to participate in the investigation made by the Delegate, and then make new arguments and submit new evidence on an appeal: *Kaiser Stables Ltd*, BC EST #D058/97.

In my view the removal of evidence by the company's representative, Perry Rink, is a formidable barrier to the acceptance of any criticism that the company now makes of the information presented by Mr. Boudreau and accepted by the Delegate. I place no weight on the submissions that Mr. Rink makes concerning the quality of the evidence tendered to the Delegate.

In my view, the arguments presented by the employer are entirely devoid of merit. The employer is properly named as a numbered company. The proper name of the company was discovered by the Delegate during the course of the investigation, and the Determination was made against the proper party. The employee made his complaint within the time limits set out in the *Act*. There is no rule that the Delegate must finish the investigation within 6 months of the complaint made. I therefore dismiss the appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination made November 9, 1998 is confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal