

**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 -

Harbagsh Pamma  
("Pamma")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No:** 1999/668

**DATE OF HEARING:** February 22, 2000

**DATE OF DECISION:** March 3, 2000

**DECISION**

**APPEARING FOR THE HEARING:**

L. A. Cowley	Counsel for Sunny's Clyde
Hardial Pamma	Owner of Sunny's Clyde

**OVERVIEW**

Harbagsh Pamma, pursuant to section 112 of the *Employment Standards Act* (the "Act"), has appealed a Determination by a delegate of the Director of Employment Standards (the "Director"). The Determination, dated October 14, 1999, is that Pamma is not owed vacation pay or compensation for length of service by Sunny's Clyde Inn Inc. ("Sunny's Clyde").

An appeal was filed by Pamma and with that the Tribunal set a date for a hearing. The appellant was advised of the hearing but failed to attend. The appeal is dismissed.

**THE FACTS**

The Tribunal decided, on the basis of written submissions, that the appeal warranted a hearing. The appellant and Sunny's Clyde were notified of that by letter dated January 4, 2000. The letter advised the parties that the hearing would begin at 9:00 a.m. on February 22<sup>nd</sup>, 2000 and be at Library Square, 8<sup>th</sup> Floor -- 360 West Georgia Street in Vancouver.

On the 17<sup>th</sup> of February, the Tribunal received a letter from the appellant which is dated February 15, 2000. By that letter the appellant asked for postponement of her hearing. She said that she could not make the hearing for reason of surgery. The Tribunal responded immediately. In a letter dated February 17, 2000, the Tribunal said that it would consider a postponement if the appellant's doctor confirmed the surgery and gave some indication of when the appellant would be well enough for a hearing on the appeal. The Tribunal went on to advise the appellant that, unless that information was provided, the hearing would go ahead as scheduled.

The Tribunal did not act to cancel the hearing because the appellant did not provide confirmation that she was having surgery as alleged. Nothing at all was heard from the appellant or her doctor.

I went to Library Square on the 22<sup>nd</sup> of February for the purpose of hearing the appeal. On arriving at the appointed time, I found that only persons representing Sunny's Clyde were present. I kept Sunny's Clyde waiting for over 25 minutes in the hope that the appellant was simply held up in traffic and would eventually arrive. She did not, nor did anyone representing her.

It is now the 25<sup>th</sup> of February, 2000. Nothing has been heard from Pamma.

Sunny's Clyde is now being run by Hardial Pamma. Hardial is Harbagsh's estranged husband. They are recently separated. It was not an amicable parting.

### **THE ANALYSIS**

It is clear that the appellant received notice of the appeal hearing.

For reason of efficiency, a purpose of the *Act*, the Tribunal will not grant a postponement unless there is some very good reason to do so. The appellant asked for postponement of the hearing and she was, in effect, told to show some proof that there was in fact a good reason for the postponement. She did not do that, indeed, nothing at all was heard from the appellant. I very much doubt that, if Pamma really was to have surgery as alleged, that her physician would have refused to provide the Tribunal with confirmation of that. My experience is that doctors are more than willing to accommodate their patients in that way.

The Tribunal advised the appellant that the hearing would proceed as scheduled unless the alleged surgery was confirmed. Despite that, she did not attend the hearing, nor has she acted to explain her absence.

It is Tribunal policy to deem an appeal abandoned where the appellant does not appear for his, her, or its hearing, and no reasonable explanation for the absence is supplied. But the appeal may also be dismissed pursuant to section 114 (1)(c) of the *Act*. That section of the *Act* allows the Tribunal to dismiss appeals, without a hearing, that are "*frivolous, vexatious, or trivial or ... not brought in good faith*". I am satisfied that, the appellant, in not attending her hearing and then not acting to explain her absence, has demonstrated that she is not particularly sincere or committed to the appeal, and the appeal is one to dismiss as one which is not in good faith. There is also reason to believe that the appeal is vexatious given the evidence of marital discord.

### **ORDER**

The appeal is dismissed pursuant to section 114 of the *Act*.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**