

An appeal

- by -

Clarence Douma

- 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

**ADJUDICATOR:** Lorne D. Collingwood

**FILE No.:** 2002/630

**DATE OF HEARING:** March 17, 2003

**DATE OF DECISION:** March 25, 2003

## DECISION

### OVERVIEW

Clarence (Curly) Douma (“the employer” and “the Appellant”) appealed, pursuant to section 112 of the *Employment Standards Act* (“the Act”), a November 26, 2002 Determination by a delegate of the Director of Employment Standards (“the Director”). Douma by that Determination has been ordered to pay Edward (Jim) Laing \$52,254.11 in wages, interest included.

The Determination is that Laing performed a considerable amount of work for Douma in the period June 1, 2000 to January 30, 2002 and that he was paid only \$700 for his work.

Mr. Douma appealed the Determination on December 19, 2002. He claims that he did not employ Laing. He does admit that Laing was allowed to live at his pig farm if he would help out occasionally and that Laing fed hogs, chickens and goats on a daily basis. The Appellant claims, however, that it takes less than a couple of hours to feed the animals, on average.

The Tribunal decided that the appeal required an oral hearing but it could not contact the Appellant. Notice of the hearing was sent to the Appellant’s address but the mail was returned. All subsequent attempts to contact the Appellant met with failure. The Appellant, not surprisingly, did not attend his hearing.

The appeal is dismissed. Appellants are expected to notify the Tribunal of changes of address and new telephone and fax numbers. This Appellant failed to do that.

The Determination is confirmed. The onus is on the Appellant to show that a Determination is wrong and should be varied or cancelled. The Appellant has failed to show the Tribunal that the Determination is in error.

### ISSUES TO BE DECIDED

The issue is whether there is or is not reason to vary or cancel the Determination, or send a matter or matters back to the Director.

### FACTS

Douma appealed the Determination and that led the Tribunal to invite written submissions from the Appellant, Mr. Laing and the Director. Only the Director’s delegate filed a submission.

It was decided that the Tribunal would hold an oral hearing. The hearing was set for 10.00 a.m. on the 17<sup>th</sup> of March at a facility in Abbotsford.

Notice of hearing was sent to the Appellant. That mail was returned even though it had been sent to the address which the Appellant had given the Tribunal.

The Tribunal attempted to reach Douma by telephone but was only able to leave a message on a telephone answering machine. The message is that there would be a hearing on the 17<sup>th</sup>.

Douma did not respond and the Tribunal made other attempts to contact him. None were successful. These attempts included an attempt to contact the Appellant through Kingma Bros. Developments. Douma had used that company's fax in sending a letter dated August 29, 2002 to the Tribunal.

The Appellant, not surprisingly, did not attend the hearing. I was surprised to find that Mr. Laing also did not attend the hearing set for the 17<sup>th</sup>. I waited well over half an hour for the Appellant but it was to no avail.

The Appellant has as of this day not explained his absence.

## **ANALYSIS**

Appellants are expected to tell the Tribunal if they change their mailing address and/or telephone and fax numbers. In this case, the Appellant filed an appeal and gave what is either an incorrect address or moved and failed to tell the Tribunal.

The Tribunal has done all of what it could do to present the Appellant with an opportunity to make his case.

It is Tribunal policy that where the appellant does not attend the appeal hearing, and there is not some reasonable explanation for the absence, the Tribunal will consider the appeal to have been abandoned. I consider this appeal to have been abandoned. It is dismissed.

The Determination is confirmed. The onus is on the Appellant to show that a Determination is wrong and should be varied or cancelled. The Appellant has not met that onus in this case.

## **ORDER**

I order that the appeal be dismissed pursuant to section 114 of the *Act*.

I order, pursuant to section 115 of the *Act*, that the Determination dated November 26, 2002 be confirmed.

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