

An appeal

- by -

Patrick Bubish AKA Patrick Bubuch operating as
APK Awnings and Maintenance
(the “employer”)

- 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: Paul E. Love

FILE No.: 2000/855

DATE OF DECISION: March 5, 2001

DECISION

OVERVIEW

In connection with an appeal of a Determination dated November 16, 2000, the employer Patrick Bubish, also known as Patrick Bubuch operating as APK Awnings and Maintenance (“Bubish” or “employer”) applied to suspend the Determination. The Determination was made in favour of three employees in the total amount of \$2,184.70. In the submission of the employer, the employer stated that he did not intend to deposit funds with the Director, and that he should not have to deposit the funds until after an oral hearing, because the Delegate determined the matter on false information. This was a case where the employer refused or neglected to supply records, particularly source documents concerning the employees. I did not grant the application as the employer did not show some merit to the appeal.

ISSUE:

Should I suspend the Determination dated November 16, 2000?

FACTS:

I decided this matter upon written submissions, without an oral hearing. Patrick Bubish, also known as Patrick Bubuch operating as APK Awnings and Maintenance (“Bubish” or “employer”) carries on business manufacturing and maintaining awnings and signs. The Delegate issued a Determination on November 16, 2000 and determined that three employees were entitled to wages, minimum daily pay, overtime pay and vacation pay. The Delegate determined that Carl Marinschek was entitled to a total of \$972.16, Craig Mason was entitled to the sum of \$792.57, and Peter Novak was entitled to \$403.79. For the purposes of this appeal it is unnecessary to identify the breakdown of the amounts as between overtime, wages, minimum daily pay and vacation pay. The total amount of the Determination is \$2,184.70.

The Delegate made efforts to afford to the employer a reasonable opportunity to participate in the investigation of the complaints, and the employer provided minimal information to the Delegate and in particular refused or neglected to provide source documents concerning the employees.

The Director appears to have made some efforts to collect on the Determination, and assets of the employer were seized on behalf of the Ministry of Finance for non-payment of taxes.

The employer applied on December 12, 2000, and seeks to suspend collection proceeds on the Determination. The basis for the application is that the employer believes that the Delegate acted on false information. The employer is not prepared to deposit any funds until the truth comes out at an oral hearing.

The Director does not object to the suspension of the Determination provided the full amount of the Determination is deposited into trust with the Director. The Director is concerned that the employer does not have the ability to meet wage obligations to its employees because a majority of the assets of the employer have been seized by the Ministry of Finance. The Director indicates that only a full deposit of the funds will protect the employees covered by the Determination.

ANALYSIS:

The Tribunal does have jurisdiction pursuant to section 113(2) of the *Employment Standards Act* (the “Act”) to suspend the determination, but only if the appellant is prepared to deposit with the Director the total amount or a smaller amount the Tribunal considers adequate. Section 113(2) reads as follows:

- 113(2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
- (a) the total amount, if any, required to be paid under the determination, or
 - (b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.

I am concerned in this case that the appellant has made it clear in his submission that he does not intend to deposit funds, and believes that he should not have to deposit funds with the Director. The suspension application does not identify clearly any reasons why I should suspend the Determination. I may infer from the submission made the employer is unhappy with the calculations made, with regard to one of the three complainants who are owed money by the employer.

I am not satisfied, in this application that the appellant has demonstrated “some merit” to the appeal sufficient to satisfy me that this is not a frivolous appeal: *Tricom Services Inc., BCEST #D420/97*. I therefore decline to grant the application to stay the effect of the Determination.

ORDER

Pursuant to Section 112 of the *Act*, the application to suspend the Determination of November 16, 2000 is dismissed.

PAUL E. LOVE

**Paul E. Love
Adjudicator
Employment Standards Tribunal**