

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 -

Inside-Out, The Wellness Connection Inc.
(the “Employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/398

DATE OF DECISION: August 11, 1998

DECISION

APPEARANCES/SUBMISSIONS

Ms. Lynne Fletcher on behalf of the Employer

Ms. Sharon Charboneau on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on May 29, 1998 which found that Ms. Darlene Porter (“Porter”) was entitled to \$1,380.79 on account of wages, vacation pay and compensation for length of service. The delegate also issued a penalty Determination. The Employer questions the calculation of the amount owing to Ms. Porter.

ISSUE TO BE DECIDED

The issue is whether the Determination should be varied, confirmed or cancelled when the Employer refused to participate in the investigation.

FACTS

On April 10, 1997, the Employment Standards Branch received a complaint from Porter. She had been a receptionist/front office manager for the Employer between November 26, 1996 and February 28, 1997. Based on the information received from Porter, the Director’s delegate determined that Porter entitled to \$1,380.79.

In the Determination, the Director’s delegate observed that the Employer refused to participate in the investigation:

“The Employer, i.e. Fletcher, has refused to respond to phonecalls, letters, or two Demands for Employer Records sent to the Registered Records Office and her office address. A penalty was issued for the contravention of s. 46. This was not responded to or appealed. A Demand Notice was sent to Fletcher’s current employer, and the penalty has been paid. A second Demand for

Employer Records was sent out May 19/98 for compliance by May 27/98. This has not been responded to either.”

The submission from the delegate states that she went to considerable effort to contact the Employer, including sending Demands for Employer Records to the registered and records office of the Employer.

The Employer does not dispute this.

ANALYSIS

I agree with my colleagues in *Kaiser Stables*, BCEST #D058/97, and numerous other cases, that the Tribunal will not allow an appellant who refuses to participate in the Director’s investigation, to file an appeal on the merits of the Determination. The Employer now seeks to question the amounts owing to Porter. These matters could have been addressed during the investigation. In my view, the Employer refused to participate in the investigation and, in the result, the appeal must fail.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determinations in this matter, dated May 29, 1997 be confirmed in the amount of \$1,380.79 together with such interest as may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal