

An appeal

- by -

Michael Downes  
("Downes")

- 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:** David B. Stevenson

**FILE No.:** 2001/844

**DATE OF DECISION:** April 4, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Michael Downes (“Downes”) of a Determination of the Director of Employment Standards (the “Director”) dated November 6, 2001.

Downes had filed a complaint with the Director alleging his employer, Kevin Swanson operating as Kelcho Contracting (“Kelcho”) had failed to pay him all wages owed under the *Act*. The Determination concluded that Kelcho had not contravened of the *Act* and, pursuant to Section 76(2) of the *Act*, ceased investigating and closed the file on the complaint.

Downes says the Determination is in error because the investigation done by the Director was incomplete and inadequate.

### ISSUE

The issue in this appeal is whether Downes has shown the Determination was wrong in a manner that justifies the intervention of the Tribunal under Section 115 of the *Act* to cancel or vary the Determination, or to refer it back to the director.

### FACTS

The Determination sets out the following by way of background:

Kevin Swanson operating as Kelcho Contracting is a silviculture contracting business which is under the jurisdiction of the Act. Michael Downes worked from June 24, 2001 to July 20, 2001 as a silviculture worker at a rate of \$00.00 [sic] per hectare.

The complaint was filed in the time period allowed under the Act.

The above amount stated as the rate was corrected in a submission from the Director to read “\$400.00 per hectare”. In his complaint, Downes claimed he was owed \$300.00 plus wages for 54 hours of supervisory work. Downes provided the Director with the name of an individual to contact for verification that he had performed the work as he alleged. Downes also indicated Kelcho may have had a contract with Plateau Forest Products. The Determination noted the position of the employer as follows:

... the complainant has received all the wages to which he is entitled, and in fact received more than that to which he is entitled. In support of his position, the employer stated:

- he paid the complainant \$466.00, representing 1.115 ha @ \$400.00/ha;
- in addition, he paid the complainant \$300.00 representing .75 ha @ \$440.00/ha, even though the complainant did not work and did not deserve to be paid this amount.

The Director preferred the position of Kelcho and ceased investigating the complaint. The Determination notes the Director spoke with Janice Thurston, a Forester with Plateau Forest Products, concerning, it appears from the Determination, whether any contractual relationship existed between Kelcho and Plateau Forest Products. She said there was none. The Director did not contact the individual whose name had been provided by Downes. In the submission on the appeal, the Director says that Downes indicated this individual was either an employee of Plateau Forest Products or the Ministry of Forests. The Director was unable to locate this individual through either Plateau Forest Products or the Ministry of Labour.

In his appeal, Downes says the Director could have located this individual by looking in the Vanderhoof section of the Prince George telephone directory. Downes has included with the appeal a statement which is indicated to be from this individual. It states that Downes was working as a brush cutter for Kevin Swansen [sic] and was observed or spoken to on the work site on the five days noted in the letter. The letter contains a disclaimer that it is not intended to indicate the amount of work done or time spent by Downes at the site on any of those days.

## **ARGUMENT AND ANALYSIS**

The burden is on Downes, as the appellant, to persuade the Tribunal that the Determination was wrong, in law, in fact or in some manner of mixed law and fact. In a practical way, what that means for Downes is that he must demonstrate to the Tribunal, through this appeal, that the central conclusion in the Determination, which is that he was paid all wages owing under the *Act*, was wrong.

While the Director acknowledges the individual whose name was provided by Downes was not interviewed during the investigation, that fact alone does not establish the validity of Downes' claim for unpaid wages. The letter does nothing, on its face, to establish the claim made by Downes to an additional \$300.00 wages plus 54 hours of supervisory work. As there is nothing else in the material that would allow me to conclude the Determination is wrong, the appeal must be dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated November 6, 2001 be confirmed.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**