

An appeal

- by -

Universal Cleaning Equipment Inc. op. as Kirby Home Care Products
("Universal")

- 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.: 2003A/36

DATE OF HEARING: March 26, 2003

DATE OF DECISION: April 28, 2003

DECISION

APPEARANCES:

on behalf of Universal Cleaning Equipment Inc.: No one appearing

on behalf of the individuals: Both in person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Universal Cleaning Equipment Inc. operating as Kirby Home Care Products (“Universal”) of a Determination that was issued on October 15, 2001 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Universal had contravened Part 3, Section 16, Part 4, Sections 40(1) and 40(2) and Part 7, Section 58 of the *Act* in respect of the employment of Joshua McLafferty (“McLafferty”) and Tracey Williamson (“Williamson”) and ordered Universal to cease contravening and to comply with the *Act* and to pay an amount of \$3869.46.

In its appeal, Universal submitted the Director had erred in finding that McLafferty and Williamson were employees for the purposes of the *Act* and, even if Williamson was an employee, she was not entitled to the amount found owing to her.

The hearing of this appeal was scheduled to commence at 9:15 am, March 26, 2002 in Kelowna. The hearing notice was issued on February 19, 2002. I am satisfied it was received by Universal. At the time appointed to commence the hearing, the employees were present. No representative of the appellant, Universal, had appeared at the appointed hour. I delayed commencement of the hearing until 9:20 am, called the hearing to order and adjourned the hearing until 9:40 am. No representative of Universal had appeared by that time. The hearing was recommenced.

ANALYSIS

This appeal is based on disagreements by Universal with conclusions of fact made by the Director in the Determination. The issues raised in this appeal, whether McLafferty and Williamson were employees for the purposes of the *Act* and whether Williamson was in any event entitled to the amount found owed to her, are predominantly factual. The burden in this appeal is on Universal to show the Director’s conclusion on the facts was wrong and to persuade the Tribunal that the errors justify the intervention of the Tribunal under Section 115 of the *Act*. The failure of Universal to appear effectively means they have failed to satisfy that burden and the appeal must be dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated October 15, 2001 be confirmed in the amount of \$3,869.46, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal