

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 -

Attivo Enterprises Ltd.
("Attivo")
and
Sue Lee, a Director or Officer of Attivo Enterprises Ltd.
("Lee")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood
FILE NO.: 98/143
DATE OF DECISION: May 4, 1998

DECISION

OVERVIEW

This appeal is by Attivo Enterprises Ltd. (“Attivo”) and Sue Lee, a Director or Officer of Attivo Enterprises Ltd. (“Lee”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) and it is against two Determinations by a delegate of the Director of Employment Standards (the “Director”), both of which are dated February 11, 1998. The first Determination is against Attivo and it is that the company owes Prem Kumar wages, overtime pay, statutory holiday pay, vacation pay and interest. The second Determination is that Lee is a Director/Officer of Attivo and that, as such, she is liable for moneys which Attivo owes Kumar.

ISSUE TO BE DECIDED

Lee neither argues whether she is a director/officer, nor the extent of her personal liability in this case. The sole issue raised by the appeal is the matter of whether or not the employee has been fully paid for her work. Both Lee and Attivo argue that Kumar has been paid for all work.

FACTS

Prem Kumar was employed by Attivo as a sewing machine operator from August 21 to October 30, 1996.

Kumar filed a complaint and that led the delegate to begin an investigation of it. The delegate tried to contact Attivo for payroll records and a response through letters and telephone calls but was unsuccessful. A Demand for Payroll Records was then sent to Attivo, to both its business address on Beatty Street in Vancouver and its Registered and Records office. That sent to a Beatty address was returned unclaimed even though, as the appeal makes clear, that is an address of the company. That sent to the Registered and Records office was accepted. Nothing was heard from Attivo.

Hearing nothing from Attivo, the delegate proceeded to decide the complaint on the basis of records supplied by the employee. Determinations were issued against both Attivo and Lee as director/officer of Attivo.

Lee now appeals on behalf of herself and Attivo. The appeal argues that Kumar was paid in full for her work. Submitted on appeal is a T4 Statement of Remuneration Paid for Kumar and copies of what appear to be pay cheques that were issued to Kumar. That is the extent of the supporting evidence. No record of the hours worked by Kumar is submitted.

ANALYSIS

The employer simply has not submitted those records which are required if the Tribunal is to determine what moneys, if any, are owed Kumar. I speak of a record of the hours worked by the complainant in particular.

The employer did not co-operate with the Director's investigation. Lee and Attivo now attempt with to make a case on appeal, in other words, to present what could have been, indeed, **should** have been submitted to the Director at the investigation stage. I see no reason to allow that as I am presented with no reasonable explanation for the employer's utter lack of co-operation. As another Adjudicator has put it, appellants cannot be allowed "to 'sit in the weeds', failing or refusing to co-operate with the delegate ... and later filing appeals of the Determination when they disagree with it" [*Tri-West Tractor Ltd.* (1996) BCEST #D268/96].

The appeal is dismissed.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated February 11, 1998 be confirmed in the amount of \$1,101.87, together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the date of issuance.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal