

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 -

Lloyd Alan Douglas
(" Douglas ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000160

DATE OF HEARING: April 28, 2000

DATE OF DECISION: May 4, 2000

DECISION

APPEARANCES

| | |
|---|--|
| no appearance | by Lloyd Alan Douglas |
| Julie Williams, Officer & Director & Patricia Allen, General Manager | for Ashton Mechanical Ltd. |
| no appearance | for the Director of Employment Standards |

OVERVIEW

This is an appeal brought by Lloyd Alan Douglas (“Douglas”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on March 2nd, 2000 under file number ER 054-178 (the “Determination”).

Douglas originally filed a complaint with the Employment Standards Branch alleging that he had been discharged by Ashton Mechanical Ltd. (“Ashton”) without just cause. Douglas also claimed unpaid overtime pay.

Following an investigation of Douglas’ complaint, the Director’s delegate determined that Ashton did have just cause to terminate Douglas inasmuch as Douglas contravened Ashton’s work rules relating to the consumption of alcohol while on duty. Further, the delegate dismissed Douglas’ complaint relating to unpaid overtime on several grounds: the overtime pay was allegedly earned well over two years prior to the filing of the complaint and thus was statute-barred; Douglas failed to provide adequate proof of having worked any overtime hours and the employer’s records suggested that all earned overtime was paid in accordance with the *Act*; and, finally, since Douglas was a “manager”, he was not entitled to overtime pay in any event by reason of section 34(f) of the *Employment Standards Regulation*.

ISSUE ON APPEAL

On March 13th, 2000 Douglas filed an appeal of the Determination with the Tribunal. In essence, Douglas challenged the delegate’s findings of fact and claimed that while he had attended a tavern on the day in question, he did not consume any alcoholic beverages, only 2 “non-alcoholic” beers. Douglas did not, by way of his appeal, challenge the dismissal of his overtime claim.

FINDINGS

Since this appeal would involve reviewing facts and assessing various witnesses’ (and most especially, Douglas’) credibility, this appeal was set down for an oral hearing. A notice of hearing, returnable on April 28th, 2000 at 9:00 A.M., was mailed to the parties on

April 11th, 2000 and in a letter faxed to the Tribunal on April 18th, 2000, Douglas acknowledged receipt of an employer submission that was forwarded to him along with the hearing notice. I am satisfied that Douglas was aware of the appeal hearing date and time.

On April 28th, 2000 the employer attended the appeal hearing (two officers attended on its behalf) but Douglas failed to appear. I verified with the Tribunal's staff that Douglas did not provide any prior written or verbal notice regarding his inability to attend the appeal hearing nor did he contact the Tribunal on the morning of the 28th. Having waited some 20 minutes past the 9:00 A.M. hearing start time, I dismissed this appeal as abandoned. I might add that when I left the Tribunal's offices at approximately 9:30 A.M., Douglas had still neither attended at the Tribunal's offices or had otherwise contacted the Tribunal to explain his failure to appear.

There being no evidence before me upon which I could reasonably conclude that the findings set out in Determination are incorrect, this appeal must be dismissed.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal