

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 -

Mihai George Tugui
(the "Appellant")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: E. Casey McCabe

FILE No.: 2000/88

DATE OF HEARING: May 5, 2000

DATE OF DECISION: May 12, 2000

DECISION

APPEARANCES

Darryl Frost	for Bigridge Brewing Corporation operating Bigridge Brewing Company Limited Partnership
No one	for the Appellant, Mihai George Tugui
No one	for the Director of Employment Standards

OVERVIEW

This is an appeal by Mihai George Tugui pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”), from a Determination dated January 25, 2000. The Determination found that Mr. Tugui was a manager and therefore not entitled to overtime pay and statutory holiday pay. Arising out of the question whether Mr. Tugui was a manager was an issue regarding the sufficiency of records of daily hours which could be used to calculate wages had they been found payable. It is notable that a finding in the Determination that Mr. Tugui was entitled to compensation pay in lieu of notice was not appealed. Those monies were paid to Mr. Tugui.

ISSUE(S) TO BE DECIDED

1. Should the appeal be dismissed as abandoned since Mr. Tugui did not attend nor was he otherwise represented at the hearing?

ANALYSIS

The Employment Standards Tribunal scheduled a hearing into this appeal for May 5, 2000. The hearing notice was sent to the parties dated April 11, 2000. Mr. Frost, on behalf of the employer, Bigridge Brewing Corporation, attended.

I convened the hearing at approximately 9:05 a.m. I then adjourned the hearing until 9:30 a.m. to allow time for Mr. Tugui to appear. During that period I asked the Employment Standards Tribunal to attempt to contact Mr. Tugui.

I was informed by a representative of the Employment Standards Tribunal that a telephone call placed to the number the tribunal had on file resulted in the Tribunal being told by a person who identified himself as Mr. Tugui’s roommate that Mr. Tugui was unable to contact his main witness and therefore would not be attending the hearing.

I reconvened the hearing at 9:30 a.m. Mr. Frost was in attendance. Mr. Tugui did not attend. Mr. Tugui is the appellant in this matter. The onus rests on Mr. Tugui to convince the Tribunal on the balance of probabilities that the Director's Delegate had erred in the Determination dated January 25, 2000. I have reviewed the file material and I am not convinced based on that

material that Mr. Tugui has discharged the onus on him in this matter. Therefore, in accordance with the Tribunal's policy of considering appeals abandoned where the appellant fails to show at the hearing I dismiss this appeal.

ORDER

The Determination dated January 25, 2000 is confirmed.

E. Casey McCabe
Adjudicator
Employment Standards Tribunal