

**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 -

Jan-Ras Construction Ltd.  
operating as Valley Contracting  
("Jan-Ras" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Ib S. Petersen

**FILE NOS.:** 1999/135 and 1999/136

**DATE OF DECISION:** May 6, 1999



1998 and January 15, 1998, the delegate and others went to considerable effort to seek the Employer's response with respect to the wage complaints. The Determination notes:

“The Employer was aware of the wage complaints, was provided with a copy of the complaints, and was requested to provide a response to the allegations. The employer not only refused to provide payroll information he also failed to provide any response to the allegations made by the complainants.”

The Determination found that Birinder Kaur Ottal, Gurdev Singh Ottal, Baldev Singh Dhillon, Pargat Singh Kahlon and Parvinder Ghotar were owed \$15,500.83 on account of unpaid wages, vacation pay, statutory holiday pay and--in one case--overtime wages. The Determination also provided for a “\$0.00” penalty for contraventions of Sections 18(2), 45, 46(1) and (2) and 58(1) of the *Act* and Section 23 of the *Regulation*. This aspect of the Determination is not appealed.

## FACTS AND ANALYSIS

### 1. Penalty Determination

Jas-Ran argues that the penalty Determination is wrong with respect to one employee, Ghotar

Parvinder. The Employer says that this employee, who was employed between April 16 and November 7, 1998, was, in fact, paid semi-monthly except in the months of April, May and June. The Employer says:

“The Complainant, Ghotar Parvinder, has claimed and the Respondent has found as a fact that he was not paid semi-monthly. *The Appellant neglected to provide to the Director evidence that the Appellant had paid Ghotar on a semi-monthly basis. This error in judgement was a result of the Appellant's failure to understand its obligation to produce information to the Respondent. The Appellant further was not aware of the extent of the penalties that could be imposed by the Respondent...*”

In *Narang Farms and Processors Ltd.*, BC EST #D482/98, at page 2, the penalty process is summarized as follows:

“In my view, penalty determinations involve a three-step process. First, the Director must be satisfied that a person has contravened the *Act* or the *Regulation*. Second, if that is the case, it is then necessary for the Director to exercise her discretion to determine whether a penalty is appropriate in the circumstances. Third, if the Director is of that view, the penalty must be determined in accordance with the *Regulation*.”

In this case, the only issue with respect to the penalty Determination is whether a penalty should be set aside with respect of Ghotar Parvinder, *i.e.*, one of the five complainant employees. The Employer admits to not providing the records. It explains--and provides certain payroll documentation to substantiate--that Ghotar was paid semi-monthly during part of his employment. It says it was unaware of its statutory obligations.

I am not persuaded that the appeal can succeed. First, there is nothing in Section 29(4) of the *Regulation* which limits the authority of the Director's delegate to impose penalties only where contraventions are made knowingly. In any event, given the undisputed fact that the Employer was penalized in June of 1998 for contravening the very same provision, and in November of 1998 for failing to produce records, its claims of not being aware of its statutory obligations must be taken with some degree of scepticism, as suggested by the delegate. Second, in this case it is clear that the Employer refused to participate in the Director's investigation. I agree with my colleagues in *Kaiser Stables*, BCEST #D058/97, that the Tribunal should not allow an appellant who refuses to participate in the Director's investigation, to file an appeal questioning the merits of the Determination. The issue raised by the Employer--that Ghotar was, in fact, paid on a semi-monthly basis for part of the duration of his employment--could have been addressed during the investigation. In my view, the Employer refused to participate in the investigation and I will not allow the Employer to raise this issue at this stage. In the result, the appeal must fail.

## 2. Wage Determination

The Employer appeals the findings with respect to Ghotar Parvinder and claims that he was paid all amounts owing, except \$233.06. The Employer says:

“The Complainant Ghotar Parvinder has claimed and the Respondent has found as a fact that he was not paid vacation pay, statutory holiday pay and for overtime. *The Appellant neglected to provide the Director evidence that the Appellant had paid Ghotar Pavinder vacation pay, statutory holiday pay and for overtime. This error in judgement was as a result of the Appellant's failure to understand its obligation to produce information to the Respondent. The Appellant further was not aware of the extent of the penalties that could be imposed by the Respondent.* Upon receiving legal advice and an opinion in respect of this matter, the Appellant acknowledges its responsibility to comply with the demands of the Respondent in respect of information requested and therefore apologizes in respect of its failure to comply with requests made by the Director.”

In my view, the appeal must fail. As discussed above, with respect to the Penalty Determination, in this case it is clear that the Employer refused to participate in the Director's investigation. In my view, the Tribunal should not allow an appellant who refuses to participate in the Director's

investigation, to file an appeal on the merits of the Determination. The issues raised by the Employer--that Ghotar was in fact paid on a wages, vacation pay and statutory holiday pay--could have been addressed during the investigation. The Determination and the delegate's submission details the considerable efforts undertaken by the delegate and the branch to obtain documents and information from the Employer with respect to the wage claims. There is no substantial reply to these factual assertions by the Employer. The Employer alleged "*failure to understand its obligation to produce information*" is not a defence. The Employer refused to participate in that investigation and I will not allow the Employer to raise these issues at this stage. In the result, also this appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determinations in this matter dated February 15 and 17, 1999 be confirmed.

**Ib Skov Petersen**  
**Adjudicator**  
**Employment Standards Tribunal**