

An appeal

- by -

Triple Nine Group Holdings Ltd. operating as Surrey Husky Market
("Surrey Husky")

- 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/089

DATE OF DECISION: June 19, 2003

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Triple Nine Group Holdings Ltd. operating as Surrey Husky Market (“Surrey Husky”) of a Determination that was issued on February 20, 2003 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Surrey Husky had contravened Part 3, Section 15 and Section 21, Part 4, Section 40 and Part 5, Sections 45 and 46 of the *Act* in respect of the employment of Guraj S. Dhillon (“Dhillon”) and ordered Surrey Husky to cease contravening and to comply with the *Act* and *Regulation* and to pay an amount of \$3,359.42.

Surrey Husky has appealed on the ground that the Director failed to observe principles of natural justice and asks that the Determination be cancelled. There is a one page document accompanying the appeal form comprised of a “partial list” of questions.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ISSUE

The issue is whether Surrey Husky has shown the Director failed to observe principles of natural justice in processing the complaint.

FACTS

The Determination contains the following background information:

Guraj S. Dhillon (Dhillon or the complainant) filed a complaint under Section 74 Of the *Employment Standards Act* (the Act) alleging that Triple Nine Group Holdings Inc. [sic] operating as Surrey Husky Market (Surrey Husky or the employer) contravened the Act by failing to pay wages as required, including “training wages”, regular wages, overtime and statutory holiday pay. At issue is Dhillon’s term of employment and whether he is entitled to additional wages under the Act.

Surrey Husky is a convenience store and gas station. The Director decided that Dhillon was employed by Surrey Husky from May 29 to September 22, 2001 as a full service attendant at Surrey Husky’s business.

Surrey Husky submitted records that showed Dhillon worked from July 2 to September 22, 2001. They also took the position that the employer did not have to pay for training time and, in particular, training time for “propane” and “lottery terminal operations” as that training was transferrable to any employer “in that line of business”. The Determination noted that Dhillon had not claimed wages were owed for the two days on which he had received “propane” and “lottery terminal operations” training.

Dhillon submitted a detailed account of the dates worked and the start and stop times of each shift that he worked. To show the hours worked by Dhillon, Surrey Husky submitted a copy of a payroll ledger to the

Director during the investigation, but no supporting or source documents such as time sheets or work schedules.

The Director did not accept the records provided by Surrey Husky, doubting their accuracy for several reasons:

1. The records gave the appearance of having been made up “after the fact” in an attempt to justify the amounts paid. Wages paid after the first month of employment were “rounded up” in a way that could have resulted in significant additional wage costs and tax liability for Surrey Husky.
2. With regard to the calculation of overtime wages, except for the first month, it was impossible to determine how Surrey Husky converted regular and overtime hours to hours worked. Efforts by the Director to rationalize the conversion resulted in inexplicable discrepancies between the hours recorded and the hours paid.
3. The ledger was also confusing in how advances and deductions from wages were recorded. It showed a deduction for income tax in July, but no such deductions in August and September, and “all manner of incomprehensible additions and deductions from wages”.
4. There were discrepancies between the hours recorded in the ledger and the hours provided by Dhillon and the hours recorded on the employer’s work schedules.

The discrepancies made it difficult to find Surrey Husky’s records to be a credible recording of hours worked and the Director preferred the record of hours worked provided by Dhillon.

ARGUMENT AND ANALYSIS

The burden is on Surrey Husky to show an error in the Determination. An appeal to the Tribunal is not a re-investigation of the complaint nor is it simply an opportunity to re-argue positions taken during the investigation.

Surrey Husky believes an oral hearing is necessary in order to, “explain how much of the employer’s money, time and efforts are involved in educating and training employees to qualify for the job and why we think an employer should be allowed to recover the above cost”. There is nothing in this appeal that suggests the “money, time and efforts” involved in training Dhillon for the job was anything other than a cost of doing business for Surrey Husky. In fact, the Director notes that Dhillon did not claim wages for the two days he was receiving training for the lottery terminal operator certificate and the propane ticket and makes a specific finding of fact that otherwise “Dhillon was being trained for the employer’s business”. Section 21 of the *Act* prohibits an employer from requiring an employee to pay any part of the employer’s business costs. Accordingly, the evidence which Surrey Husky seeks to present would have no effect on the decision made by the Director. Simply put, no matter how much “money, time and effort” was put towards training Dhillon for the job, the *Act* prohibits any of those costs from being passed on to, or recovered from, the employee.

The remainder of the appeal contains a “partial list” of questions:

- when were the notes - submitted by the employee for hours worked - made?

- did the employee take into account any breaks taken by employee during working hours?
- when and how the employee found out he was not paid for hours worked what did he do about it?
- why did he not raise any concerns about his hourly wage while he was still employed, but only complained after quitting?
- why did he quit after working only 4 months?
- when did the employee take the schedules from the employer's place of business, why did he take them without the employer's knowledge and what else did he take without the employer's knowledge?

The Director and Dhillon have filed replies to the appeal.

Dhillon's submission answers the questions raised by Surrey Husky.

The Director submits that Surrey Husky has not shown the Director failed to observe principles of natural justice. I agree with the submission of the Director on this point. The record clearly shows Surrey Husky was afforded a full opportunity to respond to the allegations made in the complaint, to provide any relevant evidence and to fully state its position on the allegations made. The Director also submits the "partial list" of questions attached to the appeal form are largely irrelevant to any aspect of the appeal. I also agree substantially with that submission. The only potentially relevant question relates to when Dhillon made his record of hours worked, but the appeal does no more than ask that question. In reply to that question, Dhillon says his record of hour worked was prepared from the work schedule posted by Surrey Husky each month. There was, in other words, a rational and objective factual foundation for his record, which the Determination acknowledged and accepted as the best evidence:

Where copies of the employer's schedule were available, they seem to show that Dhillon was scheduled to work the hours he claimed. With the concerns regarding the employer's records (below), there is no reason to question Dhillon's records.

Surrey Husky has not provided anything with the appeal to show the Director's decision to accept Dhillon's evidence was wrong.

In its final reply, Surrey Husky submits that proper lottery ticket and propane training "involves proper practical training of new employees by one of the employers [sic] existing employees . . . over a period of time" and says an oral hearing should be allowed in order to hear evidence about lottery ticket and propane training. As indicated above, the need for a hearing has not been established.

This appeal is dismissed. Surrey Husky has not shown the Director failed to observe principles of natural justice in making the Determination. As well, while it is apparent Surrey Husky disagrees with the decision of the Director to reject its record of hours worked by Dhillon, it has failed to show any error in that decision that would justify the Tribunal interfering with the Determination.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated February 20, 2003 be confirmed in the amount of \$3,359.42, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson
Adjudicator
Employment Standards Tribunal