

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/091

**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 18(2) of the *Act* in respect of the employment of Jatinder P. Gill (“Gill”) and ordered Surrey Husky to cease contravening and to comply with the *Act* and the *Employment Standards Regulation* (the “*Regulation*”) and to pay an amount of \$223.46.

Surrey Husky has appealed on the ground that the Director failed to observe principles of natural justice and asks that the Determination be cancelled. Surrey Husky says the Determination should be cancelled because:

. . . the employee has no proof that he has worked for us as per the time sheet submitted. This time sheet was taken by the employee without any permission from the employer whatsoever.

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:

Jatinder P. Gill (Gill 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” and regular and overtime wages. At issue is whether Gill was employed by Surrey Husky and whether he is entitled to wages under the *Act*.

Surrey Husky is a convenience store and gas station. Gill claimed he worked approximately 125 at Surrey Husky’s business during August 2001. However, he was only able to provide records showing 25 hours worked from August 16 to 19, 2001.

Surrey Husky took the position that Gill was “never actually employed” by them.

The Director accepted that Gill was being trained for Surrey Husky’s business in the period August 16 to 19, was therefore an employee under the *Act* and was entitled to wages.

## **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 when an employee refused to work after receiving these qualifications (paid for by the employer)”. There is nothing in this appeal that suggests the “money, time and efforts” involved in training Gill for the job was anything other than a cost of doing business for Surrey Husky. 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 result. Simply put, such evidence would be irrelevant because no matter how much “money, time and effort” was put towards training Gill for the job, the *Act* prohibits any of those costs from being passed on to the employee. Accordingly, I reject that aspect of the appeal which claims Surrey Husky is entitled to be repaid by Gill for the costs of training him.

Surrey Husky argues there was no proof that Gill worked the hours claimed. The Determination, however, sets out both the evidence and the rationale for concluding Gill had worked August 16 to 19 and was entitled to wages. I accept that conclusion is rationally supported by the evidence provided to the Director, do not accept the argument made by Surrey Husky on this point and dismiss this aspect of the appeal.

In reply to the natural justice issue, the Director says that Surrey Husky has not shown a failure by the Director to observe principles of natural justice. I agree with the position 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 decision of the Director to reject the position of Surrey Husky does not, in the circumstances, amount to a failure to observe of natural justice.

This appeal is dismissed. Surrey Husky has not shown any error in the Determination or that the Director failed to observe principles of natural justice in making the Determination.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated February 20, 2003 be confirmed in the amount of \$223.46, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**