

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 -

Terry and Keith Sveum operating as Alpine Installations
(the Employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Jerry W. Brown

FILE NO.: 98/205

DATE OF DECISION: June 11, 1998

DECISION

SUBMISSIONS

Mr. Keith Sveum on behalf of the Employer

Mr. Dan Pelletier on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal pursuant to the *Employment Standards Act* (the “Act”) against a Determination issued by the Director of Employment Standards (the “Director”) issued on March 11, 1998.

The Director found that the Complainant, Mr. Alex Beltchev, was an employee of Terry and Keith Sveum operating as Alpine Installations. Further, that Mr. Beltchev was entitled to unpaid wages (\$1,000), unpaid Statutory Holiday pay (\$50) and unpaid Vacation pay and interest on the unpaid monies in the total amount of \$1,191.48.

The Employer claims the Determination is incorrect.

ISSUES TO BE DECIDED

1. Should the Employer be allowed to appeal the Determination by raising new arguments when they have chosen not to participate in the investigation process?
2. If allowed, should the appeal be varied confirmed or cancelled?

FACTS

On March 11, 1998 the Director’s delegate issued a determination arising from a complaint filed by Alex Beltchev. It found that Terry and Keith Sveum were operating a business called Alpine Installations from the home address of Keith Sveum.

Mr. Beltchev was employed by Alpine Installations as a labourer during the months of March, April, May and June in 1997. The Complainant was being paid \$50 per day and worked for a total of 49 days. The Complainant was also entitled to Statutory Holiday pay and Vacation pay. Unpaid wages in the amount of \$1191.48 (including interest on the owed amount) have not been paid.

The Employer did not participate in the investigation:

“On 3 December 1997, an investigator spoke with Monique Sveum, Keith Sveum’s wife, who recalled that Beltchev worked for Terry and Keith Sveum in Squamish. She said she would contact Terry Sveum and ask him to call the investigator.”

The investigator also asked her to relay a request to Terry and Keith Sveum for employment records so it could be determined if Mr. Beltchev was owed further remuneration under the *Act*. Two further letters and a formal demand were sent to Terry and Keith Sveum operating as Alpine Installations produced no response nor records.

The Employer does not dispute that the evidence was not supplied but has appealed nonetheless.

ANALYSIS

The Tribunal has clearly established it will not allow an appeal on the merits of the Determination when the appellant has chosen or refused to participate in the Director’s instigation. (See, for example, *Kaiser Stables Ltd.* (BCEST #D058/97). The Employer’s appeal does not dispute its refusal to participate in the investigation. Issues of whether or not Mr. Beltchev was an employer, monies he allegedly owes for room and board and production of records upon request of the Tribunal were raised. At this point it is too late. These issues could have and should have been explored during the investigation.

The appeal must fail because the Employer chose not to take part in the investigation and I can find no reasoning to allow new issues to be raised at this time.

ORDER

Pursuant to Section 115 of *the Act* I order that Determination dated March 11, 1998 be confirmed and that any additional accrued interest be included.

Jerry Brown
Adjudicator
Employment Standards Tribunal