

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 -

Dhillon Investments Ltd.
operating as Da Tandoor Restaurant
("Dhillon" or the "Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NO.: 98/280

DATE OF DECISION: July 8, 1998

APPEARANCES/SUBMISSIONS

Mr. Manjit Singh Dhillon on behalf of the Employer

Mr. Didar S. Phagura on behalf of himself

OVERVIEW

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination of the Director of Employment Standards (the “Director”) issued on April 8, 1998 which determined that Dhillon was liable for unpaid wages and vacation pay to Mr. Didar S. Phagura (the “Employee”). The Director’s delegate found that Mr. Phagura was owed \$4,229.15. The delegate also issued a \$0.00 penalty.

Briefly, the delegate’s findings may be summarized as follows:

- Mr. Phagura was an employee of Dhillon. He was employed as a cook in the restaurant.
- He was employed between January 1 and December 20, 1997.
- He received \$1,500 per month (the delegate rejected a claim by Mr. Phagura that his wages were \$3,000 per month).
- The delegate concluded that Mr. Phagura was paid, except for the period from October 6 until December 20, 1997.

The delegate’s investigation included a review of such payroll documents as were available and discussions with the Employee and the Employer. Initially, the Employer told the delegate that Mr. Phagura worked only until October 6, 1997, when he was hurt in a sky train accident. The Employer produced payroll records for the period June to October 1997. In a subsequent meeting, the Employer stated that Mr. Phagura was off work from October 6 but returned to work on October 22, after his accident, and that he was paid in cash with no receipts for that period. Mr. Dhillon explained that he had produced cheques for Mr. Phagura who, however, returned them and requested cash. These cheques, explained Mr. Dhillon, could not be produced as his briefcase, containing these documents, had been stolen. In any event, the Employer explained to the delegate that Mr. Phagura had been paid from October 22. In a further subsequent meeting, the Employer told a different story: Mr. Phagura had, in fact, worked continuously between January and December and not taken time off from work after his accident. He had worked for cash between October 6 and 22 while receiving compensation for the accident.

ISSUE TO BE DECIDED

The overall issue to be decided in this appeal is whether the Tribunal should vary, confirm or cancel the Determination.

ANALYSIS

Dhillon is requesting a hearing, and states that it can “present witnesses to prove that Mr. Phagura was paid cash on time for regular pay periods”. Ordinarily, where there are factual matters in dispute on key issues, a hearing is required. In this case, however, the Employer clearly did not cooperate with the Employment Standards Branch. Quite the contrary, Mr. Dhillon initially told the delegate that Mr. Phagura did not work for the Employer after October 6, 1997. Later, however, he agreed that Mr. Phagura, in fact, remained in the Employer’s employ until December 20, 1997, but had been off between October 6 and 22 due to an accident, and had been paid in cash for the period after October 22. In a further meeting, the Employer insists that the Employee worked for cash between October 6 and 22. The Employer did not keep proper records for that period as required by the *Act*. The Employer does not take issue with the statements attributed to it during the investigation and set out in the Determination. Moreover, there is nothing in the appeal which explains the Employer’s conduct. In short, the Employer does not deny, nor does it explain, that it actively sought to mislead the delegate with respect the Mr. Phagura’s employment.

I agree with my colleagues in *Kaiser Stables*, BCEST #D058/97, and numerous other cases, that the Tribunal will not allow an appellant who refuses to participate in the Director’s investigation, to file an appeal on the merits of the Determination. In my view, the Employer’s conduct in this case is similar in kind and I will not allow the Employer to address the merits of the Determination at this stage. In the result, the appeal must fail.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter, dated April 8, 1998 be confirmed in the amount of \$4,229.15 together with such interest as may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal