

**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 -

Coast Deli "O" Inc.

(the "Appellant")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

**ADJUDICATOR:** Kim Polowek

**FILE NO.:** 2000/253

**DATE OF HEARING:** July 17, 2000

**DATE OF DECISION:** August 11, 2000

**DECISION**

**APPEARANCES**

Sue Kim	on behalf of the Employer, Coast Deli “O” Inc.
Sahel Soroush	on behalf of Coast Deli “O” Inc.
Tina Argenti	on her own behalf
No one	for the Director of Employment Standards

**OVERVIEW**

This is an appeal by the Employer (“Coast Deli”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated March 15, 2000 issued by a delegate of the Director of Employment Standards (the “Director”) which determined that:

- (1) Tina Argenti (“Argenti”) was not dismissed for just cause; and:
- (2) Coast Deli “O” Inc. had contravened Sections 40 (overtime) and 63 (termination) of the Act and Tina Argenti (“Argenti”) was owed \$482.67 on account of wages, vacation pay, regular wages and termination pay;

The Employer appeals the Determination.

**ISSUE(S) TO BE DECIDED**

These reasons do not address the merits of Coast Deli’s appeal as the matter is referred back to the Director for further investigation of the original complaint(s) against Coast Deli and relevant document disclosure.

**PRELIMINARY MATTERS AND ANALYSIS**

At the outset of the hearing and during the process of explaining the hearing process, it became evident that matters related to the availability of documents were issues which required exploration and clarification prior to conducting a full hearing. This was viewed as necessary in view of the fact that the Tribunal, as a quasi-judicial tribunal, is governed by the rules of natural justice and procedural fairness.

Sue Kim (“Kim”) of Coast Deli stated that she telephoned the Director to request the return of the original payroll records and timesheets that she had forwarded to the Director as these were her only copies of this documentation. Kim indicated that she was not aware of the date of her telephone call to the Director but believed it to be shortly after receiving a letter from the

Tribunal (dated April 11, 2000) instructing her that she must include a copy of all records and documents in support of her own Appeal to the Tribunal. Kim stated that the Director informed her that he would be present at the Tribunal hearing and would bring her requested documentation to the hearing. The delegate of the Director of Employment Standards was not present at the hearing. Kim indicated that the payroll records and timesheets held by the Director were necessary documents to facilitate her ability to present her case before the Tribunal. Kim also expressed concern that other documentation provided to the delegate of the Director was not shared with her.

Based on the alleged significance of the payroll records and timesheets to both parties, the fact that the documents were not available at the hearing, concerns regarding procedural fairness and natural justice in the conduct of the original investigation by the Director and the desire to promote fair treatment and open communication between employees and employers, I made the decision to cease the hearing proceedings and refer the matter back to the Director for further investigation of the original complaint(s) against Coast Deli and document disclosure.

**ORDER**

I Order, under Section 115 of the *Act*, that this matter is referred back to the Director for further investigation.

**Kim Polowek**  
**Adjudicator**  
**Employment Standards Tribunal**