

**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 -

Richard Malley operating as Richard Malley Transport  
("Malley Transport")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 98/282

**DATE OF HEARING:** August 13, 1998

**DATE OF DECISION:** August 25, 1998

**DECISION**

**APPEARANCES**

W. Johnston	On his own behalf
S. Gardner	Witness

**OVERVIEW**

Richard Malley operating as Richard Malley Transport (“Malley Transport”), pursuant to section 112 of the *Employment Standards Act* (the “Act”), appeals a Determination by a delegate of the Director of Employment Standards dated April 2, 1998. The Determination is that William Johnston was employed by Malley Transport and is owed \$710 in wages plus interest.

**ISSUES TO BE DECIDED**

The appeal is that Johnston has been paid in full. Malley Transport now claims that it paid Johnston for 106 hours of work, at the agreed wage rate, \$12 an hour, and that it paid 6 percent vacation pay on top of that.

The appellant failed to appear at the hearing set in the appeal. That raises the issue of whether there is a need to proceed further in the appeal.

**FACTS**

Bill Johnston worked for Malley Transport. His complaint to the Employment Standards Branch led to the Determination. The delegate found that the Workers’ Compensation Board (“WCB”) paid \$1,890 towards Johnston’s employment under a Training on the Job program but that he received only \$1,180 of that. The Determination awards Johnston the difference, \$710.

Johnston has always maintained that he was paid only \$1,180 of the \$1,890 that the WCB paid towards his employment. Malley Transport, in a submission to the delegate dated January 28, 1998, claimed that it paid Johnston the \$1,890 that he is owed for work in August, 1997. On appeal, the employer revises his claim and says that \$1,398.32 was paid, including 6 percent vacation pay. Whatever is the amount paid to Johnston for work in August, it was in cash and there is no record of payment.

Through notice of hearing dated July 15, 1998, the parties were advised there would be a hearing on August 13, 1998 at the Abbotsford Agricultural Centre in Abbotsford and that it would start at 9:00 a.m..

On the day prior to the hearing, in the afternoon, Richard Malley telephoned the Tribunal and asked that the hearing be postponed. I am advised that his request was refused.

At approximately 8:30 a.m., on the morning of August 13, 1998, Malley again called the Tribunal. This time he said that his vehicle had broken down in Langley and that he would be late getting to the hearing. I was advised of Malley's misfortune on arriving for the hearing. Langley is about a half hour's drive from Abbotsford, if that. I had two appeals to deal with that morning and I began by hearing the other case. That hearing was adjourned at 11:00 a.m.. Malley had still not arrived for his hearing.

## **ANALYSIS**

Malley's vehicle broke down in Langley and that presented him with a choice. He could find some other way of travelling to the hearing, an easy thing to do in this day and age, or just not attend his hearing. He chose the latter and that leads me to think that the appeal has been abandoned.

Should Malley have not abandoned the appeal, it is then dismissed. Malley's failure to attend his hearing has no reasonable explanation. His vehicle broke down but he could have found some other means of travelling to the hearing. Malley did not do that even though an alternate means of transport could have easily and inexpensively been arranged. That indicates to me that the appellant does not consider the appeal to be important and that the appeal is one which is frivolous, vexatious, trivial or not brought in good faith. It is therefore dismissed, as section 114 (1)(c) of the *Act* allows.

## **ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated April 2, 1998 be confirmed in the amount of \$731.90, together with whatever further interest has accrued pursuant to Section 88 of the *Act*, since the date of issuance.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunals**