

An appeal

- by -

Newcom Concepts Corp.
("Newcom")

- 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: April D. Katz

FILE No.: 2001/299

DATE OF DECISION: July 11, 2001

DECISION

SUBMISSIONS:

For the Employer	Jan Edmond
For the Employee	Doug Hollett, Carrie Janni
For the Director	Donna Miller

OVERVIEW

Newcom Concepts Corp. (“Newcom”), an employer, has filed an appeal of a Determination dated March 26, 2001 which found that Newcom owed Douglas Hollett (“Hollett”) \$19,570.19 and Carrie Janni (“Janni”) \$258.41.

The appeal states that Newcom does not dispute the amount owed but is waiting for new financing for the company to allow it to pay the employees.

This decision is based on the written submission from all parties including the Director’s Delegate.

ARGUMENT

Newcom argues that it should be given an extension of time until June 1, 2001 to pay as all the other creditors have agreed to wait for new funds to come available.

ISSUE

Did the Director err in finding that Newcom owed Hollett and Janni wages, compensation for length of service and holiday pay plus interest?

FACTS

Newcom does not dispute the findings of fact in the Determination nor the calculation of money owed to the two employees, Hollett and Janni. Newcom’s appeal is based on the lack of funds to pay.

ANALYSIS

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled. To be successful the

evidence from the appellant must demonstrate some error in the Determination, either in the facts accepted, or the factual conclusions reached or in the Director's analysis of the applicable law.

Section 112 provides as follows.

“112 (1) Any person served with a determination may appeal the determination to the tribunal by delivering to its office a written request that includes the reasons for the appeal.

Newcom has not disputed any of the facts or conclusions of law. There is no basis in fact or law to support a variation or cancellation of the Determination.

CONCLUSION

I find based on the evidence presented Newcom has not discharged the onus of proof required to set aside the Determination. The Determination is confirmed.

ORDER

Pursuant to section 115 of the *Act*, the Determination dated March 26, 2001 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal