

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 -

Intrepid Security Ltd.
("Intrepid")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

File No.: 97/484

DATE OF HEARING: October 8, 1997

DATE OF DECISION: October 8, 1997

DECISION

APPEARANCES

Steven Shinde on his own behalf

Brian Lee on his own behalf

OVERVIEW

This is an appeal by Intrepid Security Ltd. (“Intrepid”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated May 30, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Intrepid alleges that the delegate of the Director erred in the Determination by concluding that Steven Shinde (“Shinde”) and Brian Lee (“Lee”) were owed compensation for length of service and annual vacation pay in the amount of \$1,436.80 and \$2,300.00 respectively plus interest for a total of \$3,867.22.

A preliminary matter arises in this case. The appeal by Intrepid is based on evidence he did not provide to the delegate of the Director prior to the Determination being issued on May 30, 1997. I must first decide whether Intrepid is entitled to put such evidence before the Tribunal.

FACTS

Shinde was employed by Intrepid as a security guard from December 31, 1989 to July 11, 1996.

Shinde filed a complaint with the Employment Standards Branch alleging that he was entitled to compensation for length of service and was owed annual vacation pay.

Lee was employed by Intrepid as a security guard / administrative assistant from September 1989 to January 19, 1996.

Lee filed a complaint with the Employment Standards Branch alleging that he was entitled to compensation for length of service and was owed annual vacation pay.

The delegate of the Director advises that she served Intrepid with a “Demand for Employer Records” pursuant to Section 85 of the *Act* and Intrepid did not produce those records as requested.

The delegate of the Director further advises that she conducted her investigation based on the records and information provided by Shinde and Lee. The delegate of the Director was unable to compare Intrepid's records to those of the former employees. On the basis of her investigation, the delegate of the Director determined that Intrepid owed compensation for length of service and annual vacation pay to both Shinde and Lee.

The delegate of the Director performed the calculation of wages owing by using the information provided by Shinde and Lee.

The delegate of the Director issued a Determination on May 30, 1997 covering each of the former employees.

Intrepid argues in this appeal that the conclusions and calculations of the delegate of the Director were based on wrong information and *now* provides information which they allege supports this claim.

ISSUE TO BE DECIDED

Intrepid refused to provide records in response to the "Demand for Employer Records". Is Intrepid entitled to introduce evidence in appeal that it refused to provide to the delegate of the Director ?

ANALYSIS

The Tribunal addressed similar situations to the case at hand in *Tri-West Tractor Ltd.* (1996) BC EST No. D268/96 and *Kaiser Stables Ltd.* (1997) BC EST No. D058/97. Those employers did not submit certain information to the delegate of the Director during the investigation. On appeal, the employers sought to rely upon that information.

The Tribunal would not allow an appellant who refused to participate in the Director's investigation, to file an appeal on the merits of the Determination. To grant standing on appeal would be entirely at odds with the quasi-judicial nature of the investigation and determination.

Intrepid did not provide employer records as requested by the delegate of the Director. Intrepid now seeks to challenge the Determination with evidence which it could have provided to the delegate of the Director but chose not to. As set forth in *Tri-West Tractor Ltd.* and *Kaiser Stables Ltd.* the Tribunal will not allow an appellant to completely ignore the Determination's investigation and then appeal its conclusion.

I conclude that Intrepid is not entitled to introduce evidence in appeal that it refused to provide to the delegate of the Director during the investigation.

The Determination, however, must still explain the basis of its conclusions. I am satisfied that it does that. The Determination sets forth the finding that neither Shinde nor Lee were terminated with just cause, nor was the correct amount of annual vacation pay paid to them.

For all of the above reasons, the appeal by Intrepid is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated May 30, 1997 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal