

An appeal

- by -

Glenn A. Miller operating World Wide Marketing Consultants  
(the "Employer")

- 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:** Wayne R. Carkner

**FILE No.:** 2001/215

**DATE OF HEARING:** July 10, 2001

**DATE OF DECISION:** July 12, 2001

## DECISION

### APPEARANCES:

For the Appellant	No Appearance
For the Respondent	Jacques G. Le Blanc
For the Director	No Appearance

### OVERVIEW

This is an appeal by Glenn A. Miller, pursuant to Section 112 of the *Employment Standards Act* (the “Act”), of a Determination issued by the Director of Employment Standards (the “Director”) on February 16, 2001. The oral hearing of the appeal was scheduled to commence at 9:00 am on July 10, 2001. The Respondent was the only party to make an appearance. I waited one hour for an appearance by the Appellant and when this appearance failed to materialize I declared that the appeal of Glenn A. Miller was abandoned.

### ISSUES

The first issue in this appeal is whether or not the Respondent was an employee of the Appellant, and if the answer to this question is yes, was the Respondent owed monies for work performed for the Appellant.

### THE FACTS AND ANALYSIS

Section 107 of the *Act* outlines the authority of the Tribunal and the discretion that it has as to the type of proceeding that the Tribunal may conduct an appeal:

#### “Proceedings

**107** Subject to any rules made under section 109 (1) (c), the tribunal may conduct an appeal or other proceeding in the manner it considers necessary and is not required to hold an oral hearing.”

As a result of this language the Tribunal adjudicates many decisions based on written submissions by the parties named in the complaint. However, in certain instances such as allegations of bias when objective particulars are provided, a dispute on the facts or issues of credibility, etc., the Tribunal will generally hold an oral hearing to test the evidence under oath or affirmation and cross examination. These are tools that are not available to the Director’s Delegates when they are investigating complaints. The Delegates must make judgments on the

credibility of witnesses when there is a conflict in the facts provided by the parties and these judgments are made without the benefit of the tools that assist an Adjudicator when an oral hearing is conducted.

The Appellant in this case has alleged, on the appeal form and in written submissions, that the Determination contained an error in the facts, a different explanation of the facts and that there are other facts that weren't considered. The written submissions are in conflict with each other. Therefore, the only way to test the evidence is under oath or affirmation and that the evidence be subjected to cross-examination. This is difficult to do without an appearance by the Appellant.

The Appellant has also alleged in his written submissions that the Delegate was biased in with relation to the method in which he conducted the investigation. These are serious allegations, however, the Appellant did not include any particulars of this allegation of bias in the written submissions.

In an appeal the Appellant bears the onus to establish that the Delegate of the Director has committed errors in his conclusions that would be fatal to the Determination. As the allegations are based on a conflict in the facts, in essence the Respondent's story vs. the Appellant's story, it is difficult to review the evidence without an appearance by the Appellant and, as a consequence, this failure to appear proves fatal to the Appellant's case.

Regarding the issue of "bias", the onus is on the Appellant to show with clear objective evidence that a bias or a reasonable apprehension of bias has occurred. The Appellant's written submissions contain no particulars of the alleged circumstances of bias and I must conclude that these allegations arise only as a result of the Determination going against the Appellant and that these allegations are frivolous in nature.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated February 16, 2001 be confirmed as issued in the amount of \$995.99 together with whatever additional interest that may have accrued, pursuant to Section 88 of the *Act*, since the date of issuance of the Determination. Such additional interest is to be calculated by the Delegate.

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**Wayne R. Carkner**  
**Adjudicator**  
**Employment Standards Tribunal**