

An appeal

- by -

Dr. Robert H. Dykes
(the "Appellant")

- 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.: 2001/316

DATE OF HEARING: July 20, 2001

DATE OF DECISION: July 30, 2001



DECISION

APPEARANCES:

For the Appellant	No Appearance
For the Respondents	Mary Douglas John Mortimer
For the Director	No Appearance

OVERVIEW

The Appellant appealed, pursuant to Section 112 of the *Employment Standards Act (the "Act")*, a Determination by a Delegate of the Director dated March 30, 2001. The Determination concluded that the Respondents were employees under the *Act* and that the Appellant owed Mary Douglas \$3,286.63 and John Mortimer \$3040.91 for regular wages, overtime wages, annual vacation pay, statutory holiday pay and accrued interest. The Appellant denies that the Respondents were ever employees and requests that the determination, which found the Appellant had contravened Part 3, Sections 16, 17, 18, 27 and 28, Part 5, Section 44 and 46 and Part 7, Section 58 of the *Act*, be cancelled.

ISSUES

1. Were the respondents employees under the *Act*?
2. Did the Director have jurisdiction to issue this Determination?
3. Did the Appellant have a reasonable apprehension that the investigating officer performed the investigation in a biased manner?

FACTS

The Appellant filed the Appeal April 23, 2001 and it was accompanied with an extensive written submission containing twenty-eight reasons why the determination should be cancelled. Of the twenty-eight reasons seventeen were submissions of "new" evidence, two were issues of jurisdiction, eight were disputes in the facts or conclusions of the facts and one was an allegation of bias.

The hearing was scheduled to commence at 09:00 am. The Respondents were the only parties appear. The hearing notice was sent to the Appellant on June 14, 2001. I ascertained that the



Appellant had not contacted the Tribunal Offices as to why he failed to appear and at 10:00 am I declared that the Appellant had abandoned the appeal and concluded the hearing.

To allow the seventeen issues of new evidence to be entered would require the Appellant to provide convincing reasons as to why this evidence was not provided to the Delegate while the investigation was being conducted.

On the two issues of jurisdiction the Appellant provided little argument in the written submission as to why the Director did not have jurisdiction to issue the Determination.

Regarding the eight disputes to the facts and conclusions of fact the Appellant would be required to persuade me, under oath and subject to cross examination, as to any errors in the facts.

The allegation of bias was not supported by any particulars in the written submission and I must therefore conclude that this allegation was frivolous, vexatious and filed in bad faith as was the entire appeal.

I conclude that the appeal was abandoned by the Appellant.

ORDER

I order that the Determination dated March 30, 2001 be confirmed in the amount of \$3,286.63 owing to Mary Douglas and the amount of \$3030.91 owing to John Mortimer along with any additional interest accrued since the issuance of the Determination, such interest to be determined by the Delegate.

Wayne R. Carkner
Adjudicator
Employment Standards Tribunal