

**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 -

Alan Mundy  
("Mundy")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David Stevenson

**FILE NO.:** 98/325

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

## DECISION

### APPEARANCES

for the appellant

no one appearing

for Northern Metallic Sales Ltd.

Helen Gurnsey  
Keith Gurnsey  
Bruce Burleigh

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Alan Mundy (“Mundy”) of a Determination which was issued on May 4, 1998 by a delegate of the Director of Employment Standards (the “Director”). In that Determination the Director, among other things, dismissed a claim by Mundy that he had worked during his lunch break and was entitled to overtime wages for the time he alleged he worked.

Mundy has appealed that conclusion, claiming, on balance, his assertion that he worked during his lunch break should have outweighed those of his former employer, Northern Metallic Sales Ltd., who said he was specifically instructed not to work during his lunch break and, in fact, had hired Mundy’s father to work a four hour period, from 10 am to 2 pm, to ensure Mundy had his required break.

### FACTS

The hearing was scheduled for September 16, 1998 commencing at 9:00 am. I am satisfied notice of the time, date and place of the hearing was communicated to Mundy. At the scheduled start time Mundy had not appeared. No communication with the Tribunal had been received from Mundy prior to the hearing requesting an adjournment or indicating he was unable to attend for good reason. The commencement of the hearing was delayed for 20 minutes, following which the hearing was commenced in his absence.

The appeal is based entirely on challenges to the factual conclusions reached by the Director in making the Determination.

### ANALYSIS

In an appeal to the Tribunal, particularly in an appeal challenging conclusions of fact made by the Director, the appellant bears the burden of demonstrating, on a balance of

probabilities, that the conclusion of the Director was wrong. Where the appellant fails to appear, that burden cannot be met and the appeal fails.

That is the result in this case.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination of May 4, 1998 be confirmed.

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**David Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**