

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 -

DCC Systems Ltd.

(“ DCC ”)

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/353

DATE OF DECISION: October 12, 2000

DECISION

APPEARANCES:

on behalf of DCC Systems Ltd. No one appearing

on behalf of the individual In person

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by DCC Systems Ltd. (“DCC”) of a Determination which was issued on April 27, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that DCC had contravened Part 3, Section 16 and Section 27, Part 4, Section 40 and Part 7, Section 58 of the *Act* in respect of the employment of Kenny N. Hruschak (“Hruschak”), and ordered DCC to cease contravening and to comply with the *Act* and to pay an amount of \$5,085.43.

In its appeal, DCC contended the Determination was wrong because the person with whom the Director was dealing as the “employer” during the investigation was neither an officer or a director of DCC. The appeal stated that the directors and officers of DCC were not aware of the complaint and the failure of that person to properly deal with the Director during the investigation should not be considered the responsibility of DCC. The appeal then alleged that the records and statements provided by Hruschak were inaccurate and overstated the hours worked. The appeal alleged there was significant new evidence available through the company records.

The hearing on this appeal was set for September 11, 2000 to commence at 9:00 am at the location set out in the Notice of Hearing issued to the parties and the Director on July 27, 2000. No representative for DCC appeared at the appointed time and location on the date set. I am satisfied that DCC received the Notice of Hearing.

ANALYSIS

This appeal raises two factual issues: first, whether the records and statements of the complainant were inaccurate and overstated; and second, whether the employer’s records, which were not produced during the investigation, should be accepted on appeal to support the first element of the appeal. Both of these issues would require DCC to show that the conclusions of fact found in the Determination concerning the complainant’s daily hours of work were wrong and that circumstances existed which would justify the Tribunal allowing DCC to introduce material that was reasonably available to be produced, but was not produced, during the investigation. The failure of any representative of DCC to appear at the appeal hearing and present evidence on the two issues raised in the appeal effectively results in there being no basis for concluding that the Determination is wrong.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated April 27, 2000 be confirmed in the amount of \$5,085.43, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson

David B. Stevenson

Adjudicator

Employment Standards Tribunal