

**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 -

Toor Security Service Ltd.  
("Toor")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Norma Edelman

**FILE NO.:** 98/490

**DATE OF DECISION:** September 17, 1998

## DECISION

### OVERVIEW

This is an appeal by Toor Security Service Ltd. (“Toor”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director’s delegate”) on July 6, 1998. The Determination required Toor to pay the sum of \$7332.09 to Sucha Singh Shergill (“Shergill”) and the sum of \$16, 294.11 to Lakhwinder Singh Cheema (“Cheema”).

### ISSUE TO BE DECIDED

The issue is whether Toor will be permitted to submit evidence which it failed to provide to the Director’s delegate. If so, the issue to be decided is what wages, if any, are owed to Cheema and Shergill. If not, then Toor cannot succeed in this appeal.

### FACTS

Cheema and Shergill were employed by Toor as Security Guards. Both filed complaints on February 19, 1998 that they were owed wages by Toor. Both provided a record of hours worked to the Director’s delegate, as well as a record of wages received from Toor.

The Director’s delegate sent a Demand for Employer Records to Toor on March 12, 1998. No records were received and on July 6, 1998 the Director’s delegate issued a Determination. At page 2 of the Determination, the Director’s delegate stated that she based the Determination solely on information provided by Cheema and Shergill as Toor had failed to respond during the investigation. She stated that she found Cheema and Shergill to be credible witnesses and she found their records to be an accurate reflection of the hours worked and that they were owed wages in the total amount of \$23, 626.20 (including interest). A detailed calculation sheet was attached to the Determination.

In its appeal concerning Cheema, the complete submission of Toor is as follows:

- 1. This Determination is wrong because our record shows the figures that ... Cheema do not match our calculations*
- 2. Why, we are making this appeal is because all the allegation by Mr. Cheema are incorrect, for example his start date of employment.*
- 3. The facts that are in dispute are the total amount Mr. Cheema is claiming \$16,294.11. 3 N.S.F. cheques Mr. Cheema received were paid in full.*
- 4. The remedy we are seeking from the Tribunal is a fair settlement. The calculations must be reviewed, we do not agree with their records.*

Toor attached a copy of Cheema's Record of Employment and two documents outlining hours worked and wages paid between January 1, 1997 and May 28, 1998.

In its appeal concerning Shergill, the complete submission of Toor is as follows:

1. *This Determination is wrong because our records show that ... Shergill's figures do not match our calculations.*
2. *Why, we are making this appeal is because the allegations by Mr. Shergill is incorrect.*
3. *The facts that are in dispute is the total amount he is claiming \$7332.09*
4. *The remedy we are seeking from the Tribunal is a fair settlement. The calculations must be reviewed. We do not agree with their records.*

Toor attached a copy of Shergill's Record of Employment and two documents outlining hours worked and wages paid between January 1, 1997 and April 30, 1998.

The Director's delegate, Cheema and Shergill argue that the appeal should be dismissed. Cheema and Shergill state that they are owed wages in the amount calculated by the Director's delegate. They submitted copies of their daily log books, and certain pay stubs, T4 slips and NSF cheques. The Director's delegate states that insofar as Toor failed to participate in the investigation, it is now too late for it to provide information. Further, the information that Toor has now supplied is incomplete in that no information has been provided about the daily hours worked by Cheema and Shergill, nor has Toor provided other information, such as the original site logbooks, time cards, and copies of cheques.

## **ANALYSIS**

The Tribunal will not permit a party to refuse to participate in the initial processes before the Director of Employment Standards and then appeal the Director's decision on the strength of information and documentation which could have been - but was not - produced to the Director. (see for example *Kaiser Stables Ltd.* BCEST #D058/97 and *Tri-West Tractor Ltd.* BCEST#D268/96).

In this appeal, Toor does not address its failure to produce records to the Director's delegate. In another Decision (BCEST #D427/98), I have upheld a Determination which imposed a penalty on Toor for failure to comply with the March 12, 1998 Demand for Employer Records. In that decision I concluded that Toor had not offered an adequate explanation for its failure to produce records as requested by the Director's delegate.

Toor refused to participate in the investigation. The information that Toor now wants to introduce should have, and could have, been given to the Director's delegate during the

investigative stage. I will not permit Toor to now tender the information during the appeal stage. I find there are no exceptional circumstances in this case which would cause me to conclude otherwise.

In any event, the information provided by Toor is entirely incomplete and fails to establish that the Director's delegate erred in her conclusions respecting Cheema and Shergill. I offer three examples. First, Toor offers no evidence to confirm that Cheema was compensated for the 3 NSF cheques. Second, Toor provided no daily records of hours worked by Cheema and Shergill. Third, although Toor claims Cheema's start date was December 28, 1996 (rather than June 21, 1996 as claimed by Cheema), it issued paystubs to Cheema in July, August and September of 1996.

For the above reasons, I am compelled to dismiss the appeal.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated July 6, 1998 be confirmed.

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**Norma Edelman**  
**Registrar**  
**Employment Standards Tribunal**

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