

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.: 98/491

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 7, 1998. The Determination required Toor to pay the sum of \$7883.05 to Kanwaljit Singh Thind (“Thind”).

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 Thind. If not, then Toor cannot succeed in this appeal.

FACTS

Thind was employed by Toor as a Security Guard. He filed a complaint on May 4, 1998 that he was owed wages by Toor. He provided records to the Director’s delegate to support his claim for wages.

The Director’s delegate sent a Demand for Employer Records dated June 9, 1998 to Toor requesting that records be produced by June 24, 1998. No records were received and on July 7, 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 Thind as Toor had failed to respond during the investigation. She stated that she found Thind to be a credible witness and she found his records to be complete and that he was owed wages in the amount of \$7883.05 (including interest). A detailed calculation sheet was attached to the Determination.

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

1. *This Determination is wrong because our records show that ... Thind calculations do not match our records.*
2. *Why we are making this appeal is because the allegations by Mr. Thind are incorrect. His pay slips for November 27 to December 11, 97 were ready, but he did not pick up.*
3. *The remedy we are seeking from the Tribunal is a fair settlement.*

Toor attached a copy of Thind’s Record of Employment and one document outlining hours worked and wages paid between January 1, 1998 and May 28, 1998.

The Director's delegate argues that the appeal should be dismissed as Toor failed to participate in the investigation and this is the third time that it has not provided any information until the appeal was filed. The Director's delegate further stated "It is submitted that a pattern has been exposed which lends credibility to the positions of the Complainants".

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 #D426/98), I have upheld a Determination which imposed a penalty on Toor for failure to comply with the June 9, 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 Thind. For example, Toor offers no response whatsoever to the issue of whether Thind is owed wages for statutory holiday pay and pay for uniform cleaning, nor does it provide a record of daily hours for Thind.

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 7, 1998 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal