

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 -

Standard Plumbing & Heating Ltd.
("Standard")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 98/547

DATE OF DECISION: October 5, 1998

DECISION

OVERVIEW

This is an appeal by Standards Plumbing & Heating Ltd. (“Standard”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued by a delegate of the Director of Employment Standards on July 24, 1998. The Determination requires Standard to pay \$7,149.93 to Jaswant Singh Nirbain (plus interest) for the period of his employment from January 7, 1997 to November 3, 1997. Standard’s accounting service submitted the following grounds for its appeal:

1. The determination is wrong. The said employee was employed by Standard Plumbing and Heating Ltd. as of 16th May, 1995 and was laid off due to shortage of work on January 13th, 1996.
2. He did not work for Standard Plumbing and Heating Ltd. during the taxation year 1997. Therefore, Standard Plumbing and Heating Ltd. is disputing the determination.
3. Standard Plumbing and Heating Ltd. was paying him his wages every month. Payroll sheets are enclosed herewith for your reference.

In support of its appeal, Standard Plumbing provided copies of payroll records for 1995 and 1996.

This appeal proceeded by way of written submissions.

ISSUES TO BE DECIDED

Did the Director’s delegate err in determining that Standard owed wages to Mr. Nirbain?

FACTS

The Director’s delegate wrote to Standard on June 12, 1998 to advise it that Mr. Nirbain had made a complaint under the *Act* and alleged that he had not been paid wages for all hours worked between January 7, 1997 and November 3, 1997. A copy of the complaint and the amount of wages claimed was enclosed with the June 12th letter. Standard was asked to make payment in full or provide its payroll records to dispute the claim on or before June 26, 1998. Standard did not reply and the Director’s delegate issued a Demand for Employer Records on June 29, 1998. Standard did not provide the records which were demanded. As a result, the Director’s delegate determined the amount of wages owing to Mr. Nirbain on the following basis:

Findings of Fact

I have completed my investigation into these allegations. As the Employer declined to participate in the investigation, the only evidence on which a determination in this matter could be reached was on information supplied by the Complainant. I accepted the Complainant's evidence that he was employed by the Employer from January 7, 1997 to November 3, 1997; that he was to be paid at a rate of \$9.00 per hour; that he worked the hours claimed; and that he did not receive the wages and annual vacation pay set out in this Determination.

Conclusion

I have determined that Jaswant Singh Nirbain is entitled to wages and annual vacation pay and interest in the amount of \$7,149.93...

In support of its appeal, Standard provided copies of payroll records for the period May 16, 1995 to January 13, 1996 at which time, it submits, Mr. Nirbain was "laid off due to shortage of work." Standard's appeal does not address the issue of why it did not reply to the various pieces of correspondence sent to it by the Director's delegate. Also, it did not reply to the Tribunal to respond to the documents which support the Director's determination. Those documents included, amongst others: a copy of the hours which Mr. Nirbain claimed to have worked during 1997; a copy of a cheque issued by Standard to Mr. Nirbain on October 22, 1997 in the amount of \$6,310.00 which is marked as "Pay fully August, September, October."; a copy of Central Credit Union notice that a cheque issued by Standard to Mr. Nirbain on September 6, 1997 in the amount of \$1,931.00 was returned due to insufficient funds.

ANALYSIS

I find there are two reasons why Standard's appeal cannot succeed.

First, as noted in *Tri-West Tractor Ltd.* (BC EST #D268/96):

This Tribunal will not allow appellants to "sit in the weeds", failing or refusing to cooperate with the delegate in providing reasons for the termination of an employee and later filing appeals of the Determination when they disagree with it. An appeal under Section 112 of the *Act* is not a complete re-examination of the complaint. It is an appeal of a decision already made for the purpose of determining whether that decision was correct in the context of the facts and the statutory provisions and policies. The Tribunal will not necessarily foreclose any party to an appeal from bringing forward evidence in support of their case, but we will not allow the appeal procedure to be used to make the case that should have and could have been given to the delegate in the investigative process.

Secondly, I note that Standard does not dispute that it did not provide any records to the Director's delegate during her investigation of the employee's complaints. Section 114(1)(c) of the *Act* allows the Tribunal to dismiss an appeal if it is "...frivolous, vexatious or trivial or is not brought in good faith." Black's Law Dictionary (6th edition) defines "frivolous" as:

A pleading (which) is clearly insufficient on its face and does not controvert the material points of the opposite pleading, and is presumably interposed for mere purpose of delay or to embarrass the opponent. A claim or defense is frivolous if a proponent can present no rational argument based upon the evidence or law in support of that claim or defense.

Similarly, a frivolous appeal is defined as "...one in which no justiciable question has been presented and appeal is readily recognizable as devoid of merit in that there is little prospect that it can ever succeed."

When I review the Determination and the parties' submissions I find that Standard's appeal is devoid of merit because it has not made any submission nor given any evidence to challenge or controvert the findings made by the Director's delegate. As noted above, Standard made no reply at all when requested to do so by the Tribunal.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal