

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 -

South Okanagan Logging Ltd.
("SOL")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE N_{O.}: 1999/427

DATE OF **H**EARING: September 30, 1999

DATE OF **D**ECISION: October 21, 1999

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by South Okanagan Logging Ltd. (“SOL”) of a Determination which was issued on June 15, 1999 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that SOL had contravened Sections 18(2), 48 and 58(1) of the *Act* in respect of the employment of four former employees of SOL, Richard Hay, Michael Ian Brown, Graeme Smith and Jason VanWinkle. The Determination ordered SOL to cease contravening the *Act*, to comply with the requirements of the *Act* and to pay an amount of \$5939.17. Pursuant to Section 98 of the *Act* and Section 29 of the *Employment Standards Regulation* (the “*Regulations*”), the Determination also included a zero dollar (\$0.00) penalty.

SOL says in its appeal that the Determination is wrong, alleging several factual errors have resulted in incorrect conclusions and calculations by the Director. SOL also alleges some of the employees have engaged in a conspiracy to defraud SOL and its directors.

ANALYSIS

A hearing on this appeal was scheduled for Penticton on September 30, 1999 commencing at 9:00 am. I am satisfied the Notice of Hearing was received by SOL, as representatives of SOL have communicated several times with the Tribunal seeking an adjournment and a change of venue for the hearing of the appeal. No adjournment or change of venue has been granted by the Tribunal.

The hearing commenced at 9:00 am on September 30, 1999 at the location shown on the Notice. At the commencement of the hearing, no representative of SOL was present. The hearing was adjourned for ½ hour to allow for the possibility that SOL’s representative was unavoidably delayed. The hearing recommenced at 9:30 am and still no representative of SOL was present.

This appeal is based on disagreements by SOL with conclusions of fact made by the Director in the Determination and allegations of fraud and conspiracy by SOL against the former employees. The burden in this appeal is on SOL to show the Determination is wrong, either in fact or in law. The failure of SOL to appear effectively means they have failed to satisfy their burden and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, the Determination dated June 15, 1999 is confirmed in the amount of \$5939.17, plus interest on that amount pursuant to Section 88 of the *Act*.

David B, Stevenson
Adjudicator
Employment Standards Tribunal