

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 -

Cote Industries Ltd.
("Cote")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 1999/500

DATE OF HEARING: October 13, 1999

DATE OF DECISION: October 25, 1999

DECISION

APPEARANCES

Gyula Banati

On his own behalf

OVERVIEW

Cote Industries Ltd. (“Cote”) has appealed a Determination of the Director of Employment Standards (the “Director”) which is dated August 6, 1999. The appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”).

The Determination orders Cote to pay \$2,920.00 in compensation for length of service to its former employee, Gyula Banati. Interest is awarded on top of that.

On filing its appeal, Cote complained that the Determination is wrong on the facts. The appellant also argued that it is not liable to pay compensation for length of service because Banati failed to report for work on being recalled to work after a temporary lay off. A hearing was set in the matter. The Tribunal then received an ‘eleventh hour’ request for its postponement from Cote. Cote was advised that the hearing would go ahead as planned. Cote did not attend the hearing.

ISSUE TO BE DECIDED

What I must decide is whether it is or is not appropriate to proceed further in the appeal given the appellant’s failure to attend the hearing which was set in the appeal.

FACTS

The appeal is dated August 12, 1999 but was received by the Tribunal on the 16th of August.

On the 16th of August, notice of the appeal was sent to the interested parties, the Director and Banati, with a copy going to Cote. Banati responded with a submission.

The Registrar of the Tribunal proceeded to set a date for a hearing in the appeal. The parties were notified of the hearing by letter dated September 15, 1999. The hearing was set for 9:00 a.m. on the 13th of October. That is clearly stated on the notice as is the location of the hearing.

The office of the Registrar tells me that on the 12th of October, 1999, Cote asked for postponement of the hearing. Cote was told that the hearing would proceed as planned and that it should arrange for someone to be there.

When I arrived for the appointed hearing, which was at 9:00 a.m. sharp, I found the employee, accompanied by his daughter, but no one representing the employer. I waited for more than twenty minutes for the appellant. No one representing Cote ever appeared.

Nothing more has been heard from Cote.

ANALYSIS

Cote had ample notice of the hearing, plenty of time to arrange for a person or persons to represent it. Despite that, at the “eleventh hour”, it requested postponement of the hearing.

The Tribunal does not grant last minute postponements except in exceptional circumstances. To do so will in almost all cases be rather inconvenient for other persons with an interest in the appeal. It is, moreover, quite inconsistent with the need to provide efficient dispute settlement procedures, a stated purpose of the *Act* (section 2).

Cote’s request for a postponement was denied. I accept, no evidence to the contrary, that Cote was told that there would be no postponement because of the eleventh hour nature of its request and because Cote failed to offer any good reason for the postponement.

While a party’s failure to attend a hearing may in some cases be due to unforeseen circumstances and entirely legitimate, I am given no reason to think that that may be true of this case. Cote has not bothered to explain its absence. Where the appellant fails to appear, and no reasons or insufficient reasons are given for the absence, the appeal is deemed abandoned.

I am satisfied that the appeal may also be dismissed pursuant to section 114 (1)(c) of the *Act*. Cote has shown that it is not particularly serious about the appeal and that leads me to conclude that the appeal is one which is frivolous, vexatious, trivial or not in good faith.

The Determination is confirmed.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated August 6, 1999 be confirmed in the amount of \$3,011.24, and to that amount I order the addition of whatever further interest has accrued pursuant to Section 88 of the *Act*, since the Determination's date of issuance.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunals