

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 -

Kelly Day, Director/Officer of
R&K Logging Ltd.
("Kelly Day")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE NO.: 97/381

DATE OF HEARING: September 19, 1997

DATE OF DECISION: October 15, 1997

DECISION

APPEARANCES

for the appellant:	No one appearing
for Duncan H. Day	Duncan H. Day Barbara Day
For Duncan Curtis Day	Duncan Curtis Day

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Kelly Day, Director/Officer of R&K Logging Ltd. (“Kelly Day”) from a Determination of a delegate of the Director of Employment Standards (the “Director”) dated April 22, 1997. The hearing of the appeal was scheduled for August 29, 1997. The hearing on this appeal was to be heard together with a companion appeal from another director/officer of R&K Logging Ltd., Rodney Webber. At the request of Kelly Day the hearing was adjourned to September 5, 1997. On September 5, 1997, Kelly Day did not attend. His absence caused a significant problem for Mr. Webber, as Kelly Day was the only director/officer involved in the day to day operations of the company and Mr. Webber had no personal knowledge of the matters raised by the two appeals. At the request of Mr. Webber the hearing was again adjourned, to September 19, 1997. On that date Kelly Day did not attend.

ANALYSIS

It is firmly established that in an appeal pursuant to Section 112 of the *Act* the burden of proof is on the appellant to show on a balance of probabilities that the Determination under appeal is wrong and ought to be varied or canceled.

Where the appeal is based on a dispute relating to the factual underpinnings of the Determination, as it is in this case, the nature of the burden requires the appellant to produce evidence calling into question the correctness of the facts accepted by the delegate in making the Determination. Where the appellant fails to appear at the hearing, the Tribunal has no evidence and the burden has not been met. The failure of an appellant to meet the burden of proof will result in the dismissal of the appeal and that is the result in this appeal.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated April 22, 1997 be confirmed.

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David Stevenson
Adjudicator
Employment Standards Tribunal