

An appeal

- by -

568674 British Columbia Ltd. operating as Allen Contracting Group  
("Allen Contracting")

- of a Determination issued by -

The Director of Employment Standards  
(the "Director")

pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2002/423

**DATE OF DECISION:** October 25, 2002

## DECISION

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by 568674 British Columbia Ltd operating as Allen Contracting Group (“Allen Contracting”) of a Determination that was issued on July 12, 2002 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Allen Contracting had contravened the Act in respect of the employment of Gabor Kadar (“Kadar”) and ordered Allen Contracting to cease contravening and to comply with the Act and to pay an amount of \$1,054.70.

Allen Contracting says the Determination is wrong on its facts. Allen Contracting says the complainant was advanced an amount of money equivalent to the amount found owing.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

### ISSUE

The issue in this appeal is whether Allen Contracting has shown there is an error in the Determination requiring the Tribunal to exercise its authority under Section 115 of the Act to cancel the Determination, as requested, or to refer it back to the Director.

### FACTS

The Determination sets out the following background information:

568674 British Columbia Ltd operating Allen Contracting Group (the “employer”) is an entity involved in (among other things) hauling logs - an activity which is under the jurisdiction of the Act. Gabor Kadar worked from January 29, 2002 to February 28, 2002 as a logging truck driver on a commission basis (percentage of the load). The complainant terminated his employment. The complaint was filed in the time period allowed under the Act.

The Determination noted the position of Allen Contracting:

The position of the employer is as follows:

- the complainant is not owed any wages, he has received all wages to which he is entitled;
- the \$1000.00 he alleges he is entitled to was an advance on his wages.

In support of his position the employer provided a copy of the complainant’s pay statement showing an advance on the complainant’s wages (attached as Exhibit ‘A’).

The complainant denied he had received the \$1000.00. He said that when he received his pay cheque after he had quit, it indicated he had received that amount as an advance, but in fact he had not.

The investigating officer chose to accept the version of facts given by Kadar:

Based on the statements of the parties, the evidence provided, and on the balance of probabilities, I prefer the position of the complainant on this matter. The pay statement provided by the employer shows that \$1000.00 was deducted from the complainant's wages as a "Xmas advance". It makes no sense that the complainant would receive an advance at Christmas (2001) when he did not commence work as an employee until the end of January (2002).

The Determination went on the note that it appeared "the employer was attempting to use the complainant's wages to pay a debt incurred by the employer in his previous dealings with the complainant's company".

In this appeal, Allen Contracting continues to assert the \$1000.00 was an advance on wages and says:

Mr. Kador knew my company was logging and asked for an advance on his future truck driving wages. I instructed my staff to transfer \$550 to a bank account number given by Mr. Kador after I drove to Quesnel and gave Mr. Kador \$450 cash.

Allen Contracting also states, as the reason for the appeal:

Mr. Kador asked my staff (office) and then myself for an advance on future wages. He agreed to come drive a logging truck on a job that started for us. He would start in the new year. He had not done any other work for me, or my company.

Allen Contracting alleges there are seven people who could give oral evidence that Kadar received the \$1000.00 as an advance on wages for log hauling. There is no indication in the Determination or from the material on file that this information was given provided during the investigation. No such statements have been provided with the appeal.

## **ARGUMENT AND ANALYSIS**

The burden is on Allen Contracting, as the appellant, to persuade the Tribunal that the Determination was wrong and justifies the Tribunal's intervention. Placing the burden on the appellant is consistent with the scheme of the *Act*, which contemplates that the procedure under Section 112 of the *Act* is an appeal from a determination already made and otherwise enforceable in law, and with the objects and purposes of the *Act*, in the sense that it would be neither fair nor efficient to ignore the initial work of the Director (see *World Project Management Inc.*, BC EST #D134/97 (Reconsideration of BC EST #D325/96)).

That burden has not been satisfied in this case. The position of Allen Contracting in this appeal simply re-states the position taken during the investigation. No further information is provided that would justify a conclusion the findings made in the Determination in respect of that position were wrong, unreasonable or not logically supported by the facts of which the investigating officer was aware.

In response to the assertion in the appeal submission that there are "seven witnesses" who can support the position of the appellant, I would say two things: first, if there were indeed seven people who can confirm that assertion, Allen Contracting had a responsibility during the investigation to ensure that information was given to the investigating officer; and second, under the Tribunal's Rules of Procedure, Allen Contracting is required to provide all relevant information with the appeal. There is nothing in the appeal other than a bald assertion that the money was paid as an advance and seven people can give that

evidence. None of the ‘seven people’ are identified nor has Allen Contracting attached any document to the appeal, such as a statement or declaration from any of these people, that would give any credence to the general assertion.

While I note the appeal document requested an oral hearing and made reference to a ‘tape’ that would be presented at an oral hearing, Allen Contracting had no reason to presume an oral hearing would be granted. The appeal documents specifically indicate the need to include all relevant material with the appeal and correspondence issued to the parties from the Tribunal advises them that a decision may be based solely on the written material filed.

The appeal is dismissed.

### **ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated [date] be confirmed in the amount of \$1054.70, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**