

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 -

Greg Brewer operating as Smallbone Millwork & Design
("Brewer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 98/513

DATE OF DECISION: October 16, 1998

DECISION

OVERVIEW

This is an appeal by Greg Brewer operating as Smallbone Millwork & Design (“Brewer”), 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 (the “Director”) on July 10, 1998. The Director imposed a penalty of \$500.00 due to Brewer’s failure to produce employment records pertaining to Thomas Kehn as required by Section 46 of the *Employment Standards Regulation* (B.C. Reg. 396/95).

Brewer offers several reasons for not producing the records which the Director required of him:

- (i) he has been out of the province intermittently from January, 1998 to date due to “employment opportunities”;
- (ii) Thomas Kehn was employed to work “for a set fee” and did not submit any hours of work during his employment; and
- (iii) he has no employees and no record of Mr. Kehn’s hours of work.

Consistent with one of the purposes of the *Act*, “to provide fair and efficient procedures for resolving disputes over the application and interpretation of this *Act*” both the Tribunal and the Director made several attempts to resolve this appeal without adjudicating the matter. Brewer either did not respond or did not comply with the proposed terms of resolution which were made available through the Tribunal’s alternative dispute resolution procedures.

ISSUE TO BE DECIDED

Did the Director err in imposing a penalty of \$500.00?

REASONS

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. (emphasis added)

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.”

Mr. Brewer bears the onus of proving his case. To have some prospect of meeting that onus he must submit some evidence or argument which challenges the material point in the Determination. When I review the Determination, the appeal and the submissions I find that this appeal is devoid of merit because Mr. Brewer has not made any submission nor given any evidence to challenge or controvert the findings made by the Director’s delegate in the Determination. I also find that he has not challenged the rationale set out in the Determination. For all of these reasons I dismiss the appeal under Section 114 of the *Act* as I find that it is a frivolous appeal.

ORDER

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

Geoffrey Crampton
Chair
Employment Standards Tribunal