

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 -

Aladdin Limousine Service Inc.
(the “Employer”)

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR:	Ib S. Petersen
FILE NO.:	98/589
DECISION DATE:	November 6, 1998

DECISION

APPEARANCES/SUBMISSIONS

Mr. Ali Farbehi on behalf of the Employer
Mr. John Turner on behalf of the himself

ANALYSIS

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on August 18, 1998 which found that Turner was entitled to \$1,666.75 on account vacation pay, statutory holiday pay and compensation for length of service. The Employer claims that the Determination is wrong. It argues that Turner was paid by commission which included over time and statutory holiday pay. The Determination states, among other things, that the Employer failed to respond to the delegate's letters and demands for documents. The Employer does not dispute this.

The issue is whether the Determination should be varied, confirmed or cancelled when the Employer refused to participate in the investigation. On this point I agree with my colleagues in *Kaiser Stables*, BCEST #D058/97, that the Tribunal will not allow an appellant who refuses to participate in the Director's investigation, to file an appeal on the merits of the Determination. The issues raised by the Employer--that the commission included statutory holiday pay and that Turner quit --could have been addressed during the investigation. In my view, the Employer refused to participate in the investigation and I will not allow the Employer to raise these issues at this stage. As such, the appeal must fail.

ORDER

Pursuant to Section 115 of the Act, I order that the Determinations in this matter, dated August 18, 1998 be confirmed together with such interest as may have accrued, pursuant to Section 88 of the Act, since the date of issuance.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal