

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 -

Nova Express Inc.
(“Nova Express” or the “employer”)

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

ADJUDICATOR: Paul E. Love

FILE No.: 2000/735

DATE OF HEARING: November 15, 2000

DATE OF DECISION: December 6, 2000

DECISION

APPEARANCES:

Robert Krell for the Director

OVERVIEW

This is an appeal by of a Determination, dated December 29, 1999. The appellant did not appear, and therefore the appeal was dismissed as abandoned.

FACTS

This matter has had a somewhat convoluted history. On December 29, 1999, after concluding that the business was subject to provincial jurisdiction, the Director issued a Determination that Keith Eremko was an employee of Nova Express Inc (“Nova Express” or “employer”) and entitled to wages in the amount of \$7, 985.09. Nova Express Inc. operated a courier service, and the major issue before the Delegate was whether Eremko was an employee or an independent contractor.

Following the Determination, the employer made an assignment into bankruptcy on or about February 7, 2000. Jack Ramnauth, a former director of Nova Express, filed an appeal. In a decision *Nova Express Inc.*, #D201/00, an adjudicator dismissed the appeal on the basis that Mr. Ramnauth had no legal status to act on behalf of Nova Express, given that Nova Express was in bankruptcy and the trustee in bankruptcy did not appoint Mr. Ramnauth to act on its behalf.

On May 23, 2000, Mr. Leginsky, counsel for Mr. Ramnauth, filed a notice indicated that the trustee appointed Mr. Ramnauth to act for him in the proceedings. Mr. Ramnauth applied for a reconsideration of the decision, so that the liability of the corporate directors of Nova Express to Eremko could be determined on the merits. During the course of that appeal Mr. Leginsky provided a detailed written submission. In the reconsideration decision, *Nova Express Inc* #D3809/00), the adjudicator cancelled the decision in #D201/00 and referred the matter back to the Tribunal to appoint an adjudicator to hear the merits of the appeal. Mr. Leginsky ceased acting for Mr. Ramnauth about July 28, 2000.

The parties were notified on October 6, 2000 of the hearing date for this appeal. No written submissions or documents were received from either Mr. Ramnauth or Keith Eremko I attended on the hearing date and no one appeared on behalf of Nova Express or on behalf of Keith Eremko. Following a wait of ½ hour, the Delegate made an application to dismiss the appeal as abandoned. I note that no party has applied for an adjournment of the hearing, prior to the hearing date. The Delegate referred me to another case involving an employee, Scott, *Nova Express Inc.*, BC EST #D329/00, in which Mr. Ramnauth failed to appear after following a procedure similar to that outlined above. I adjourned the matter for decision.

In the appeal materials sent to me by the Tribunal, I have a lengthy appeal submission submitted by Mr. Ramnauth's former counsel. I note that I have not considered the merits of that submission. This matter was for an oral hearing. The written submission of counsel is not evidence.

As the appellant has not appeared at the hearing or supplied evidence or submissions with regard to this appeal, the appeal is dismissed, as abandoned, and the Determination is confirmed.

ORDER

Pursuant to section 115 of the *Act*, the appeal of the Determination dated December 29, 1999 is dismissed as abandoned.

Paul E. Love

**Paul E. Love
Adjudicator
Employment Standards Tribunal**

PEL/bls