



An appeal

- by -

544302 B.C. Ltd. operating as Coquitlam Gas Bar
(the "Employer")

- 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: Ib S. Petersen

FILE No.: 2001/549

DATE OF HEARING: October 1, 2001

DATE OF DECISION: October 2, 2001

DECISION

APPEARANCES:

Mr. Karim Chandani	on behalf of the Employer
Mr. Armandeep Grewal	on behalf of himself
Mr. Richard Omusura	on behalf of himself
Mr. Jaswinder Dhanoa	on behalf of himself

FACTS AND ANALYSIS

This is an appeal by the Employer pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against two Determinations of the Director of Employment Standards (the “Director”) issued on July 5, 2001 which found that five former employees were entitled to \$6,844.01 on account of regular wages, overtime wages and vacation pay. The Determination, in brief, found that the five employees were employed as gas attendants by the Employer, who operated a gas station. The Employer operated the gas station under contract with the Real Canadian Superstore. Their last day of employment was January 5, 2001, the date on which the Real Canadian Superstore terminated the Employer’s contract.

The Delegate found that the Employer did not participate in the Investigation. The Determination states, among other things, that the Employer failed to respond to the delegate’s letters and demands for employer records. In the result, the Delegate based her findings on the information and documents supplied by the complainant employees. She found that regular wages were owed for the pay period December 24, 2000 to January 5, 2001. She also found that some of the employees were owed overtime wages and that all of the employees were owed vacation pay.

The Employer says in its appeal that the Determination is wrong.

From submissions at the hearing, and the material on file, the following facts may be extracted:

- On April 2, 2000, the Delegate sent a letter to the Employer at its business address and at its registered and records office, at 3136 Duchess Avenue, North Vancouver. It is apparent that the Delegate understood this to be the president of the Employer’s (Mr. Asif Jetha) home address. He claimed to be living at another address. The Employer conceded, however, that this was the address provided to the Registrar of Companies. There was no response to this letter.

- On April 26, 2000, the Delegate sent a second letter and Demand for Employer Records to the Employer at its business address and at its registered and records office, at 3136 Duchess Avenue, North Vancouver. The Employer did not respond to the letter and the Demand which was returned “unclaimed” on June 7, 2001.
- There was a typographical error in the postal code on the letter sent to--what the Delegate believed to be--the Employer’s (Jetha’s) home address, at 3136 Duchess Avenue, North Vancouver. On June 13, 2000, the delegate sent a second Demand for Employer Records. There was no response to this correspondence.
- On July 5, 2001, the delegate issued the Determination based on information and documentation supplied by the complainant employees. The Determination was sent to the registered and records office. The employer acknowledged receiving the Determination.

As I indicated at the hearing, this appeal turns on whether the Employer failed to cooperate with the Delegate’s investigation. Considering all of the circumstances of the instant case, I am of the view that the Employer failed to cooperate with the investigation.

First, requests for information and the Demand for records was sent to the Employer, both at its (former) business address and at its registered and records office. The Employer says that Jetha did not live at the address--3136 Duchess Avenue, North Vancouver--and did not receive the requests. He used to live there and it was the address supplied to the Registrar of Companies, not only as the registered and records office, but also as his (Jetha’s) address as an officer and director of the Employer. It is the responsibility of the Employer to file the appropriate notices with the registrar of Companies and, in the circumstances, I do not accept its failure to do that--or its stated ignorance of such requirements--to be a reasonable explanation.

Second, Karim Chandani, who is also Jetha’s brother-in-law, and who actually resided at 3136 Duchess Avenue, North Vancouver, explained that while he used to be a partner in the business--the details were not quite clear to me--he did not open the correspondence addressed to the Employer because it was to Jetha’s attention. It appears that Chandani put up the capital for Jetha, and was a partner in the business for a year, or a year and a half, until the money had been paid off. Chandani ran another gas station in Vancouver. He explained that he was paid a management salary by the Employer and “oversaw business” and “controlling inventory.” He agreed that employees switched back and forth between the two gas stations. The payroll stubs, submitted to the Delegate as part of her investigation, indicates 3136 Duchess Avenue, North Vancouver as the Employer’s address.

Third, as well, Jetha explained that he was out of town for some two and a half week in April, 2000 (though he was unable to provide the dates). This begs the question why he did not respond to the second Demand issued in June.

There is, in my view, no reasonable explanation of why the Employer did not cooperate with the investigation. Section 122 of the Act provides, *inter alia*, that a Demand is “deemed” served if it is “sent by registered mail to the person’s last known address.” There can be no argument that the Demands were not properly served. In my view, the Employer had ample opportunity to provide information and documentation. The issues raised by the Employer’s appeal on the merits--such as entitlement to overtime wages and vacation pay--could have been addressed in the investigation. I will not allow the Employer to raise these issues at the appeal level.

In my view, the appeal must fail.

ORDER

Pursuant to Section 115 of the Act, I order that the Determinations in this matter, dated June 5, 2001, be confirmed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal