

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 -

Coquihalla Towing Co. Ltd.
(the "Employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/508

DATE OF DECISION: January 02, 2001

DECISION

APPEARANCES/SUBMISSIONS:

Mr. Leo Ouellet on behalf of the Employer

Mr. Rod Bianchinni on behalf of the Director

ANALYSIS

This is an appeal by Ouellet pursuant to Section 112 of the *Employment Standards Act* (the "Act"), against a Determination of the Director of Employment Standards (the "Director") issued on June 27, 2000 which found that Dana Paynter and Gary Schramm were entitled to \$2,473.30 on account regular wages, vacation pay and unauthorized deductions.

The Employer is involved in the towing business. The two Employees worked for the Employer, in Paynter's case, from November 1996 to December 17, 1999, and in Schramm's case from August 7, 1999 to August 11, 1999. Both worked as tow truck operators paid on a commission basis.

Ouellet argues that the Determination is wrong. He says that Paynter and Schramm were paid in full. He also says that the deductions were authorized and were, in fact, for the Employee's benefit, in this case the payment for his defence in a charge of impaired driving. He suggests that Paynter is lying about wages owed.

The Determination states, among other things, that the Employer failed to respond to the delegate's requests for documents and information:

"The delegate contacted Coquihalla on two occasions, records were requested and promised on Feb 17, 2000. Follow-up calls were made. Coquihalla responded on May 23, 2000 promising to forward records pertaining to the complainant's allegations. Coquihalla provided no records to prove payment of wages, nor did they respond to the allegations, other than stating that no wages were owed."

This does not appear to be in dispute.

The Determination also says that the Employer filed an assignment into bankruptcy on May 1, 2000 and that Campbell Saunders Ltd was appointed Trustee of the estate. Ouellet's submissions disclose, as well, that the Employer declared bankruptcy.

I see three issues before me in this appeal:

1. Does Ouellet have standing to bring this appeal?
2. Did the Employer fail to cooperate with the delegate's investigation such that it is barred from now arguing the merits of the Determination?
3. If not, has the Employer shown that the Determination is wrong with respect to the merits.

I turn to the first issue. In my view, Ouellet does not have standing to bring this appeal. There is nothing in the appeal to suggest that he has authority to act on behalf of the trustee in bankruptcy (*Reliable Glass Ltd. operating as Tiger Glass*, BCEST #D181/00). In *Canadian Neon Ltd.*, BCEST #D 080/00, the Adjudicator noted:

“Section 71(2) of the federal Bankruptcy and Insolvency Act states that “on assignment [into bankruptcy], a bankrupt ceases to have any capacity to dispose or otherwise deal with his property, which shall, subject to this Act and to the rights of the secured creditors, forthwith pass to and vest in the trustee named in the ... assignment ...” The trustee, in turn, is given wide authority to deal with the bankrupt's property. For example, the trustee may, with the permission of the inspectors, “bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt” (see Section 30(1)(d)). Thus, on bankruptcy, the bankrupt's property ... vests in the trustee who is given, for the most part, exclusive authority to deal with that property.

Accordingly, Canadian Neon does not have the legal authority to appeal the Determination as that right lies solely with Canadian Neon's licensed trustee Whether this appeal was filed by Fyfe in his personal capacity, or as an agent of Canadian Neon, the same result holds: the appeal is simply not properly before the Tribunal and thus the appeal must be dismissed”

In my view, these principles are applicable to the instant case. Ouellet does not have standing to bring this appeal. For that reason alone it must be dismissed.

Second, and in any event, even if I am wrong with respect to the above, I am of the view that the appeal must, nevertheless, be dismissed. In my view, the Employer failed to co-operate with the delegate's investigation. The particulars are set out in the Determination and in the delegate's submission in the appeal. It is clear, and not in dispute, that the delegate made real efforts to obtain information and documents from the Employer. The Tribunal will generally not allow an appellant who refuses to participate in the Director's investigation, to file an appeal on the merits of the Determination (*Kaiser Stables*, BCEST #D058/97). The fact that Ouellet, in this appeal rely on and produce documents which appear to support his claim that, for example, the deductions in respect of Paynter were authorized, does not assist him. These documents could have been produced to the delegate in his investigation. In the result, the appeal must fail.

I do not need to deal with the merits of the appeal.

ORDER

Pursuant to Section 115 of the Act, I order that the appeal be dismissed.

IB S. PETERSEN

**Ib S. Petersen
Adjudicator
Employment Standards Tribunal**