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 -

Motion Works Group Limited
("Motion Works" or the "Employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/645

DATE OF HEARING: December 14, 2000

DATE OF DECISION: January 02, 2001

DECISION

APPEARANCES:

Mr. Simon Ward	on behalf of himself
Mr. Jeff Macht	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 a Determination of the Director of Employment Standards (the "Director") issued on August 24, 2000. The Determination found that Macht and Ward were entitled to compensation for overtime hours worked. He awarded the two employees $19,197.76.

The Employer takes issue with the delegate's conclusions. In the written appeal filed by its solicitors, the Employer says, among others, that the delegate erred in his conclusions because "not all of the relevant facts were brought to the attention of the Director" and it wants to present "further important facts." In the brief appeal, the Employer appears to concede that the two employees may have worked overtime hours, but says that days when the employees worked less than the required hours should be taken into account as well. There are no particulars in support of this.

A hearing was held on December 14, 2000. Motion Works, the appellant in this matter, has the burden to prove the Determination wrong. Although duly notified, it did not appear at the hearing. In the result, I consider that the appeal has been abandoned and dismiss it.

Even if I am wrong with respect to my conclusion set out above, I would, nevertheless, still dismiss the appeal. In my view, the time records submitted by the Employer to the delegate, and which form part of the records submitted by the delegate to the Tribunal in response to the appeal, do not "speak for themselves." There is no explanation of these records submitted by the Employer to the delegate. In a letter to the Branch, dated June 3, 1998, the Employer acknowledges that "there exists many days in which no hours were recorded" (sic).

As well, there is no explanation why the Employer did not bring the relevant facts to the attention of the delegate at the time of his investigation. In my view, that would have been the time to do so. In fact, the Determination notes:

> "The company has left British Columbia and moved its office to Toronto, Ont. Correspondence was sent to the directors of the company, advising of the wage complaints and their liability. There was only one reply, and that director advised that he was no longer with the company, and there was no reply or disagreement to the claim made by the two complainants."

For the above reasons, the appeal is dismissed.

ORDER

Pursuant to Section 115 of the Act, I order that Determination in this matter, dated August 24, 2000 be confirmed.

IB S. PETERSEN

Ib S. Petersen
Adjudicator
Employment Standards Tribunal