

**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-

Ajit S. Bains

(“Bains”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 98/667

**DATE OF HEARING:** December 21st, 1998

**DATE OF DECISION:** December 30, 1998

**DECISION**

**APPEARANCES**

Ajit S. Bains	on his own behalf
Debbie Forchuk & Hardeep Dhami	for Taj Transport International Ltd. & South West Carrier Ltd.
No appearance	for the Director of Employment Standards

**OVERVIEW**

This is an appeal brought by Ajit S. Bains (“Bains”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on October 6th, 1998 under file number 47-508 (the “Determination”).

The Director determined that Bains was never employed by Taj Transport International Ltd. (“Taj”) and/or South West Carrier Ltd. (“South West”) and, accordingly, dismissed Bains’ complaint for unpaid wages as unfounded.

The appeal was heard at the Tribunal’s offices in Vancouver on December 21st, 1998 at which time I heard evidence and submissions from the appellant (via a certified interpreter, Mr. Salil Dhaumya) and from Debbie Forchuk and Hardeep Dhami on behalf of the alleged employers. Ms. Forchuk is the operations manager for South West and Mr. Dhami is a director and officer of Taj.

**ISSUE TO BE DECIDED**

The issue raised by this appeal is entirely factual and turns on the credibility of the parties; simply put: was Bains ever employed by Taj and/or South West as he alleges?

**FACTS AND ANALYSIS**

The two companies operate a trucking business using eight trucks; the firms operate in the lower 48 U.S. States and throughout Canada. The companies employ eight drivers and two managers.

Bains’ son was formerly employed by Taj and/or Southwest as a truck driver but his employment was terminated in early January 1998 for theft--“stealing money and hi-jacking a load” is how Ms. Forchuk described the son’s misconduct. Taj and South West allege that shortly thereafter, Mr. Bains apparently threatened one of the two firms’ principals. The alleged employer asserts that

Bains' complaint, filed February 9th, 1998, is a purely retaliatory and wholly fraudulent attempt to "get back at the company" because Bains' son was terminated.

Bains testified that he worked as a night security guard at the two companies' yard from May to October 1997 but that he never received any wages whatsoever during that period although he understood he was to receive a monthly salary of \$1,500. Bains could not produce any written evidence to substantiate his offer of employment or anything to show that he worked during the period alleged.

Bains was not able to give the correct address of companies' yard (or even provide adequate directions as to the location of that yard) to the Director's delegate. Further, Bains was not able to identify Mr. Dhami (he identified Dhami as another company director, Mr. Pitral Kang) when the parties met with the delegate even though Bains says that it was Dhami who first hired him. Bains never completed a TD-1 form at the outset of his employment and he never received a "record of employment" at the end of his alleged employment in October 1997; Bains took no steps to follow up this latter matter. Bains did not indicate on his 1997 income tax return that he had been employed by the two companies during the 1997 calendar year.

Bains does not have any credible explanation as to why he would have continued to work an, according to him, 11-hour shift, 7 day work week, for some 6 months without receiving *any* compensation.

Ms. Forchuk commenced her relationship with the two firms as a consultant in August 1997; she assisted with various management functions. Her testimony was that Bains was never employed during the time that she has been associated with the two firms. She confirmed, as is noted in the Determination, that Bains could not identify Dhami during a meeting with the Director's delegate. She confirmed that the companies have never had an evening security guard and have no need for such a person. She also confirmed that the company did issue, in June 1997, a cheque to Bains for \$500 to reimburse him for some unexpected expenses incurred by his son while the son was in the United States on a trip--the cheque was made payable to Bains rather than to the son because the expenses were incurred using Bains' VISA card. This cheque was subsequently countermanded when the employer first learned about the possible malfeasance of the son; malfeasance that ultimately lead, after a lengthy investigation, to the termination of the son's employment.

Dhami testified that he attended the son's wedding on August 16th, 1997 and that Bains was also in attendance throughout the evening even though Bains submitted a calendar that purported to show that he (Bains) worked on the evening of August 16th. I might add that the delegate rejected this calendar as an *ex post facto* fabrication.

Bains was given an opportunity to respond to, or otherwise rebut, Forchuk's and Dhami's testimony but chose not to do so.

Upon consideration of the testimony before me, I must conclude that Bains' claim for unpaid wages allegedly owed to him by Taj and/or South West is wholly unsupported by any credible evidence.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

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**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**