

An appeal

- by -

Charest & Berthelot Logging Ltd.  
("B&L")

- 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:** David B. Stevenson

**FILE No.:** 2001/342

**DATE OF HEARING:** October 24, 2001

**DATE OF DECISION:** October 29, 2001

## DECISION

### APPEARANCES:

on behalf of Charest & Berthelot Logging Ltd.      No one appearing

on behalf of the individual                              In person

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) by Charest & Berthelot Logging Ltd. (“B&L”) of a Determination that was issued on October 27, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that B&L had contravened Part 3, Section 18(2) of the *Act* in respect of the employment of Sean Cooper (“Cooper”) and ordered B&L to cease contravening and to comply with the *Act* and to pay an amount of \$2,410.26.

In its appeal, B&L submitted the Director had erred in finding that B&L was Cooper’s employer. B&L contended that Cooper’s employment with B&L had ended on November 15, 1999 and after that date he was employed by Rick Berthelot operating as Horsepower Logging.

The hearing of this appeal was scheduled to commence at 9:00 am, October 24, 2001 in Cranbrook. The hearing notice was issued on September 24, 2001. I am satisfied it was received by B&L. At the time appointed to commence the hearing, the employee, Cooper, was present. No representative of the appellant, B&L, had appeared. I called the hearing to order at 9:00 am and promptly adjourned the hearing until 9:15 am. No one appeared on behalf of the appellant, B&L. The hearing was recommenced. The hearing concluded at 9:30 am.

### ANALYSIS

This appeal is based on assertions of fact made by one of the principals of B&L and with disagreements by B&L with conclusions of fact made by the Director in the Determination about the relationship between B&L and Cooper. This appeal has already been considered by one Panel of the Tribunal, which referred certain questions of fact back to the Director for further analysis and comment. The referral back spawned several additional submissions from the parties and more assertions of fact.

The burden in this appeal is on B&L to persuade the Tribunal that the Determination is wrong. The failure of B&L to appear and call evidence supporting their assertions effectively means they are unable to satisfy that burden and the appeal must be dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated October 27, 2000 be confirmed in the amount of \$2,410.26, together with any interest that has accrued pursuant to Section 88 of the *Act*.

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**David B. Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**