

An appeal

- by -

Glocon Traffic Control Ltd.
("Glocon")

- 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: M. Gwendolynne Taylor

FILE No.: 2001/648

DATE OF DECISION: November 20, 2001

DECISION

OVERVIEW

Pursuant to section 112 of the *Employment Standards Act*, Glocon Traffic Control Ltd. (“Glocon”) filed an appeal from a Determination by the Director dated August 20, 2001. The Director found that Glocon had contravened Section 17 of the *Act*, by failing to pay a former employee (“the complainant”) wages as required. The Director Ordered Glocon to forward \$6,732.91 to satisfy the wages owed and statutory interest.

On September 12, 2001, Glocon appealed the Determination requesting that the Tribunal refer the case back for further investigation. Glocon’s grounds were that there was an error in the facts and there were facts that were not considered. In particular, Glocon states that the Director made the Determination without considering Glocon’s payroll records. The directing mind of Glocon is an unsophisticated business person.

ISSUE

Does the evidence support the Director’s Determination that Glocon contravened section 18 of the *Employment Standards Act* and owes back wages to the complainant in the amount of \$6,732.91?

THE FACTS

The complainant worked for Glocon from April 1, 2000 to November 30, 2000 as a labourer at the rate of \$19.90 per hour, plus \$4.00 per hour in benefits pursuant to the *Skills Development and Fair Wage Act*. The complainant submitted records showing \$6,566.19 owing.

On July 24, 2001, the Director issued a Demand for Employer Records under section 28 of the *Act*. The employer did not provide the records. On August 8, 2001, the Director’s delegate telephoned Glocon and was assured the records would be delivered by August 10, 2001. On August 13, the Director’s delegate sent a fax communication to Glocon confirming that the records had not been received. On August 20, 2001, the Director issued the Determination.

ARGUMENT

Glocon submitted that most of the jobs the complainant worked on were not covered by the *Act* although no submissions were made on what the jobs were or why they were not covered. It is not clear whether the reference is to the *Skills Development and Fair Wage Act* or the *Employment Standards Act*.

Glocon admits failure to respond to the Demand for Employer Records. She offers two explanations: First, she had to attend the funeral of family friend after which she began employment in Merrit. Second, the Director reviewed the records of this complainant when investigating other complaints, which led to determinations on 17 other complainants on March 29, 2001. During that investigation, Glocon raised concerns about whether this complainant had falsified records.

FINDINGS

The onus is on Glocon to demonstrate that the Determination was wrong or that the Director acted improperly in issuing the Determination. Basically, the issue raised by Glocon is that because the Director knew there was concern about the validity of the complainant's records, and because the directing mind of Glocon is an unsophisticated business person, the Director should have given more time for Glocon to produce records.

I do not accept Glocon's submissions. By its own admission, Glocon had been involved in a fairly large investigation by the Director, was aware of the issue concerning this complainant's records, had ample time to submit its own records even without being subjected to a Demand by the Director, failed to comply with the Director's Demand and failed to meet a voluntarily commitment.

Glocon did not provide dates for the funeral or when the move to Merrit occurred and did not suggest that this information had been provided to the Director. I do not accept lack of sophistication as a justification for failing to abide by the Director's Demand. By August 2001, Glocon had considerable contact with the Director's office and had ample opportunity to inform itself of the legal requirements and consequences.

ORDER

Pursuant to section 115 of the *Act*, I confirm the Determination issued August 20, 2001.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal