Employment Standards TRIBUNAL

An appeal

- by -

Vocalscape Communications Inc.
(the "Employer")

- 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:** Ib S. Petersen

**FILE No.:** 2001/580

**DATE OF HEARING:** November 21, 2001

**DATE OF DECISION:** November 22, 2001

# DECISION

**APPEARANCES:**

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|---|---|
| Ms. Charanjit Sahota | on behalf of herself |
| Mr. Volodymyr Kovachuck | on behalf of himself |
| Mr. Walter Nieva | on behalf of himself |
| Mr. Jan Vozenilek | on behalf of himself |
| Ms. Diane MacLean | on behalf of the Director |

**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 July 16, 2001. The Determination concluded that the Employer owed Ms. Charanjit Sahota, Mr. Volodymyr Kovachuck, Mr. Walter Nieva and Mr. Jan Vozenilek (the "Employees") $20,348.91 on account of wages, overtime wages, vacation pay, compensation for length of service and interest.

From the material on file, and I note that the Employer-Appellant did not file a reply to the response of the Director and the Employees, the Employer appears to take issue with the delegate's conclusions regarding overtime wages and compensation for length of service for Ms. Sahota. In particular, it appears that the Employer takes issue with the award of $3,375 on account of shares as compensation for overtime worked in February 2001. The Employer also appears to be of the view that Ms. Sahota resigned and was not, therefore, entitled to compensation for length of service.

A hearing was held on November 21, 2001. The Employees appeared at the hearing, and so did the Delegate. The Employer, the appellant in this matter, has the burden to prove the Determination wrong. The employer was notified of the hearing. When the Employer did not appear at the scheduled time, 9:00 a.m., I stood the hearing down. I made an inquiry to the Tribunal's office to ascertain if the Employer-appellant had contacted it with respect to its appearance. That turned out not to be the case. At approximately 9:30 a.m. I reconvened the hearing. I noted that the Tribunal's hearing notice expressly states that [i]f the Appellant fails to attend the hearing, the Tribunal will consider the appeal to have been abandoned." I entertained submissions from the Employees and the Delegate. In short, although duly notified, the Employer 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 the above, I would still dismiss the appeal. The appeal, in my view, is largely of a factual nature. The crux of the Determination is that there was an agreement between the Employer and the Employees to provide the shares in consideration for working the overtime. It is for the Appellant to establish that the Delegate erred in her assessment of the agreement between the parties and the value of the shares. As well, the termination of Ms. Sahota, should I be inclined to deal with it as it was not brought to the attention of the Delegate in the course of her investigation, also turns on the facts. In the result, the appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the Act, I order that Determination in this matter, dated July 16, 2001 be confirmed.

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