

An appeal

- by -

Abode Designs Inc.
("Abode")

- 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: Lorne D. Collingwood

FILE No.: 2001/610

DATE OF HEARING: November 16, 2001

DATE OF DECISION: November 27, 2001

DECISION

OVERVIEW

Abode Designs Inc. (referred to as “Abode” or “the Appellant”) appealed, pursuant to section 112 of the *Employment Standards Act* (“the *Act*”), an August 3, 2001 Determination by a delegate of the Director of Employment Standards (“the Director”). The Determination orders Abode to pay John Warywoda a total of \$2,202.45 in wages, interest included.

The appeal is that Warywoda is a manager and, as such, not entitled to overtime wages. It also argues that Warywoda should be made to pay a traffic fine and that a delegate may not interview witnesses as he or she investigates a complaint.

The appeal has been dismissed because Abode did not attend the hearing set in the appeal and has failed to provide a reasonable explanation for its absence. The Determination is confirmed because the Appellant has failed to show that it is in error.

APPEARING FOR THE HEARING

John Warywoda

On his own behalf

ISSUES TO BE DECIDED

The issue is the matter of whether there is any reason to proceed further in this appeal given the Appellant’s failure to attend its hearing.

FACTS

Abode appealed the Determination and that led the Tribunal to invite written submissions from Warywoda and the Director. Submissions were received and they were turned over to Abode for a response. When the parties had finished making written submissions, it decided that the appeal could not be decided on the basis of the written submissions and that a hearing was required so that an Adjudicator could hear directly from the parties and their witnesses.

Notice of the hearing is dated October 18, 2001. The notice clearly advised Abode to be present for a hearing at 9:00 a.m. on the 16th of November, 2001 in offices at Library Square, 8th Floor - 360 West Georgia Street in Vancouver.

On arriving for the appeal hearing at the appointed time and place, I found only Warywoda and a witness present. It is a policy of the Tribunal, that Adjudicators wait 20 minutes for the appellant. I kept the employee and his witnesses waiting for over 30 minutes in the hope that the

person or persons who represent the employer were simply held up in traffic but no one did appear and so I sent the employee and his witness on their way.

Abode has not contacted the Tribunal and explained its absence.

ANALYSIS

Abode was notified of the appeal hearing but it did not attend the hearing, nor has it provided the Tribunal with what is a reasonable explanation for the failure to attend. It is Tribunal policy that where the appellant does not attend the appeal hearing, and there is not some reasonable explanation for the absence, the Tribunal will consider the appeal to have been abandoned.

In my view, the failure to appear and the subsequent failure to offer any explanation for the failure to appear, demonstrates that the appeal is likely frivolous, vexatious, trivial or not in good faith. I therefore dismiss the appeal pursuant to section 114 (1)(c) of the *Act*.

114 (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied after examining the request that

...

(c) the appeal is frivolous, vexatious or trivial or is not brought in good faith.

As matters have been presented to the Tribunal, which is to say, through the written submissions, it is not shown that the Determination is in error and that it should be changed.

ORDER

I order that the appeal be dismissed pursuant to section 114 of the *Act*.

I order, pursuant to section 115 of the *Act*, that the Determination which is against Abode Designs Inc., in favour of John Warywoda, and dated August 3, 2001, be confirmed in the amount of \$2,202.45 and to that I add whatever further interest has accrued pursuant to section 88 of the *Act*.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal