

An appeal

- by -

GLS Construction (1998) Ltd.
("GLS")

- 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.: 2001/512

DATE OF HEARING: November 29, 2001

DATE OF DECISION: December 6, 2001

DECISION

OVERVIEW

GLS Construction (1998) Ltd. (referred to as “GLS” or “the Appellant”) appealed, pursuant to section 112 of the *Employment Standards Act* (“the Act”), a June 15, 2001 Determination by a delegate of the Director of Employment Standards (“the Director”). The Determination orders GLS to pay Earl George \$1,558.08 in wages, interest included. A penalty of \$150 is also assessed.

The appeal is that the Determination should be cancelled, the penalty included. According to GLS, it did not employ George, he was a subcontractor. The Director argues that there is absolutely no evidence to support a conclusion that George worked as a subcontractor. The Director also argues the Tribunal should dismiss the appeal for reasons which are set out in *Tri-West Tractor Ltd.* (BCEST No. D268/96) and *Kaiser Stables Ltd.* (BCEST No. D058/97). According to the delegate, GLS seeks to make a case on appeal which could have been made at the investigative stage but was not.

The appeal has been dismissed because GLS did not attend the hearing set in the appeal and it not provided a reasonable explanation for its absence. The Determination is confirmed, the Appellant not showing that it is in any way in error.

APPEARING FOR THE HEARING

Earl George

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

GLS appealed the Determination and that led the Tribunal to invite written submissions from George and the Director. Submissions were received and they were turned over to GLS for a response. When the parties had finished making written submissions, it was decided that an oral hearing was required.

Notice of the hearing is dated November 1, 2001. The notice clearly advised GLS to be present for a hearing at 9:00 a.m. on the 29th 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 Mr. George present. It is a policy of the Tribunal that Adjudicators wait 20 minutes for the appellant. I kept the employee waiting for 30 minutes in the hope that a person representing the employer would appear but it was to no avail and the employee was sent on his way.

Nothing has been subsequently heard from GLS.

ANALYSIS

GLS 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 lack of some reasonable explanation for it is likely demonstration that the appeal is frivolous, vexatious, trivial or not in good faith and, therefore, one to dismiss under section 114 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.

The Determination is confirmed. The Appellant has failed to show that there is anything wrong with the Determination.

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 dated June 15, 2001 be confirmed and that GLS Construction (1998) Ltd. pay Earl George \$1,558.08 plus whatever further interest has accrued pursuant to section 88 of the *Act*. The decision to impose a penalty of \$150 is also confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal