

An appeal

- by -

JCR Construction Ltd.

- 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: John M. Orr

FILE No.: 2001/639

DATE OF HEARING: December 3, 2001

DATE OF DECISION: December 13, 2001

DECISION

APPEARANCES:

J.C. Rogers	On behalf of JCR Construction Ltd.
Brian March	On his own behalf
Shan O'Hara and Wayne Cox	On behalf of the United Brotherhood of Carpenters and Joiners of America

OVERVIEW

This is an appeal by JCR Construction Ltd. ("JCR") pursuant to Section 112 of the Employment Standards Act (the "Act") from a Determination dated August 31, 2001 by the Director of Employment Standards (the "Director").

The United Brotherhood of Carpenters and Joiners of America ("the Union") filed a complaint with the Director alleging that a number of unnamed employees of JCR were not being paid appropriately and that wages were owing to them. The Director investigated and identified Brian March ("March") as an employee to whom wages were owing.

The Director had great difficulty investigating the complaint because JCR took the position that the Director had no jurisdiction because the construction work being done was a Federal Government job on Federal land and further that the Director had no jurisdiction because there were no named complainants. The Director issued two penalty determinations against JCR for failing to produce payroll records and has collected payment on those determinations. The Director also issued the determination herein in favour of Brian March.

JCR appealed the determination issued in favour of March on the same grounds that the Director had no jurisdiction because the contract was governed by federal legislation and was on federal property on federal land. Further, that anonymous complaints were not valid and nor were third party complaints. They also denied any wages owing to March.

ISSUES

The issues in this case were whether the Act applies to contracts performed for the Federal Government on Federal land, whether anonymous complaints can found an investigation, whether third party complaints are allowable, and whether any wages were owing to the employee.

THE FACTS AND ANALYSIS

The Union, as the initiator of the complaint, was granted standing as an interested party at the hearing of this appeal.

During the course of the appeal the Director's delegate objected to JCR leading evidence at the hearing considering that JCR had refused to cooperate in the investigation. JCR took the position that they refused to cooperate for bona fide reasons as they challenged the jurisdiction of the Director. I reserved my decision on this issue and heard evidence about whether or not any wages were owing to March.

After the hearing had proceeded for about 2 ½ hours JCR decided to withdraw the appeal of the determination as far as it dealt with Brian March and agreed to provide him with a cheque in the amount of the determination (together with a small amount of agreed upon interest) immediately following the hearing.

As the appeal was withdrawn the determination will be confirmed.

The Union raised an issue that they had submitted a letter dated, and received by the Tribunal, on September 24, 2001 within the time limits for an appeal. They believed that this letter constituted an appeal on the grounds that the Director's investigation had only dealt with one employee and not the others that had been included in the original complaint.

The Director's delegate explained that there was still an open file and that the other issues had been put on hold pending clarification of the jurisdictional issues. The delegate confirmed that those investigations would be considered now that the appeal by JCR was withdrawn. On this basis the Union withdrew their appeal.

ORDER

I order, under section 115 of the Act, that the Determination dated August 31, 2001 is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal