

Manitoba Labour Board

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Case No. 13/08/ESC

File No. 92646

IN THE MATTER OF: THE EMPLOYMENT STANDARDS CODE

BETWEEN:

W.W.
trading as WALLY'S ISLAND,

Employer,

- and -

K.B.,

Employee.

This Decision/Order has been edited to protect the personal information of individuals by removing personal identifiers.

WHEREAS:

1. On October 5, 2007, pursuant to Section 95 of *The Employment Standards Code*, the Director of the Employment Standards Division of the Department of Labour and Immigration, by order, dismissed the complaint of the above-named Employee against the above-named Employer.
2. The Employee having disputed the above-mentioned Dismissal Order, the Director of the Division, pursuant to Section 110 of the *Code*, referred the matter to the Board.
3. On April 16, 2008, the Board conducted a hearing at which time both parties appeared before the Board.
4. At the commencement of the proceedings, the Employee requested that the Board accept and view certain DVD's which purportedly depict the Employee's activities while in the employ of the Employer. The Board heard submissions from the Employee and the Employer regarding the admissibility of the DVD's.
5. The Board, following consideration of submissions presented, confirmed the verbal rulings made at the hearing by letter to the parties dated April 18, 2008, in which the parties were advised that the hearing would be adjourned on the basis that the Employee provide the following information to the Board by April 30, 2008:

- a) Two (2) copies of all the DVD's which the Employee obtained from the Workers Compensation Board (a copy for the Employer and a copy for the Board). In order for such video evidence to be submitted, the Board advised the Employee that a witness who could testify to the authenticity of the DVD's from first hand knowledge, must be available for the hearing on May 12, 2008;
- b) A written breakdown of all daily hours that the Employee claimed to have worked for W.W. trading as Wally's Island during the period July 1, 2006 to September 10, 2006;
- c) The details, if available, of gross sales for any of the days that the Employee claimed to have worked for W.W. trading as Wally's Island during the period July 1 to September 10, 2006.

Following receipt of the material the Board would forward the material to the Employer for review prior to the resumption of the hearing.

Further, both parties agreed that the hearing would reconvene on Monday, May 12, 2008 at 9:30 a.m.

6. On May 12, 2008, the Board reconvened the hearing at which time the Employer appeared before the Board. The Employee failed to appear before the Board in compliance with the Board's letter dated April 18, 2008, receipt of which was confirmed by way of delivery confirmation through the courier service.
7. The Board, following consideration of submissions presented by the Employer, made the following determinations:
 - a) that the Employee's claim for wages be dismissed as he failed to appear before the Board on May 12, 2008, to substantiate his claim;
 - b) that, in this particular circumstance, and noting the Employee's failure to comply with the terms of the adjournment granted by the Board's letter of April 18, 2008, and the failure of the Employee to appear at the hearing on May 12, 2008, without having requested an adjournment, the Board was satisfied, in its opinion, that the Employee's conduct before the Board was unreasonable and upholds the Employer's request for costs in the amount of One Hundred Dollars (\$100.00) pursuant to Section 125(5) of *The Employment Standards Code*.

T H E R E F O R E

WAGES:

The Manitoba Labour Board **HEREBY DISMISSES** the claim of K.B.

-and-

COSTS:

The Manitoba Labour Board **HEREBY AWARDS** costs, pursuant to Section 125(5) of *The Employment Standards Code* to the Employer in the amount of One Hundred Dollars (\$100.00) and **HEREBY ORDERS** K.B. to pay to the Director of the Employment Standards Division forthwith, costs to the Employer, in the amount of One Hundred Dollars (\$100.00).

DATED at WINNIPEG, Manitoba, this 23rd day of May, 2008.

“Original signed by”

Janet Duff, REGISTRAR

CJ:tj/rb-s