Employment Standards TRIBUNAL

Citation: Armand Norman (Re)
2020 BCEST 15

An appeal

\- by -

Armand Norman
(the "Appellant")

\- 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 (as amended)

PANEL: Carol L. Roberts

FILE NO.: 2019/201

DATE OF DECISION: February 25, 2020

DECISION

SUBMISSIONS

Armand Norman | on her own behalf

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the "*ESA*"), Armand Norman (the "Appellant") has filed an appeal of a determination (the "Determination") issued by a delegate of the Director of Employment Standards (the "Director") on November 20, 2019.

2. Ms. Norman filed 15 complaints under the *ESA* between December 10, 2018, and September 23, 2019. Among the allegations were that the Vancouver Island Health Authority carrying on business as Island Health ("VIHA") contravened the *ESA* by failing to pay her wages. The delegate concluded that the *ESA* did not apply to the complaints and determined that no further action would be taken.

3. The deadline for filing an appeal was 4:30 p.m. on December 30, 2019. Ms. Norman's appeal was delivered to the Tribunal on November 25, 2019. Ms. Norman's grounds of appeal were that the Director erred in law and failed to observe the principles of natural justice in making the Determination. Ms. Norman also contended that evidence had become available that was not available at the time the Determination was being made. Ms. Norman submitted a large number of documents in support of her appeal on November 19, 2019, November 25, 2019, and December 5, 2019.

4. This decision is based on the appeal documents, Ms. Norman's written submissions, and the section 112(5) "record" that was before the Director at the time the decision was made (the "Record").

FACTS AND ARGUMENT

5. In her complaints, the Appellant alleged, among other things, that VIHA did not pay her for "involuntary work." Ms. Norman alleged that she began working at VIHA on January 1, 1980, and that she was still employed. She alleged that she was employed 24 hours per day, 7 days per week at a number of jobs including cook, janitor, receptionist, legal assistant, and cashier. She contended she was entitled to wages, overtime pay, annual vacation pay, and statutory holiday pay from VIHA, which she asserted had acted as an employment agency. In the December 10, 2018 complaint, Ms. Norman claimed "hundreds of millions of dollars" in unpaid wages resulting from "human trafficking." Ms. Norman also alleged that VIHA used coercive measures in treating her like a domestic, forcing her to work while attempting to murder her. Subsequent complaints made similar allegations.

6. Ms. Norman advised the delegate that she worked in two programs called SuperClean and Soup-er Meals. She said that she worked at Soup-er Meals, a food preparation facility operated by VIHA, in March 2015 or 2016. Ms. Norman informed the delegate that she did janitorial work for SuperClean, which provides cleaning services at various VIHA operated sites, against her will, contending that she was abducted by the police and taken to a hospital. She contended that she was injured while at work and filed a claim with WorkSafe BC. WorkSafe BC denied Ms. Norman's claim on the basis that she was a volunteer and

that the program was one of medical therapy and training. Ms. Norman appealed that decision but no decision had been rendered at the time the Determination was issued.

7. Ms. Norman said that she was paid for work she performed with SuperClean and Soup-er Meals by Volunteer Victoria, on VIHA's behalf. The delegate noted that, in addition to VIHA, Ms. Norman had also filed complaints against Volunteer Victoria. The complaints against Volunteer Victoria were dealt with separately.

8. VIHA is a government funded regional health authority which provides health care services through a number of centres on Vancouver Island, the Islands in the Salish Sea, and the mainland communities north of Powell River and south of Rivers Inlet.

9. VIHA informed the delegate that Ms. Norman was not, and had never been, an employee. It asserted that Ms. Norman had participated, as a patient, in therapeutic rehabilitation programs offered as part of a range of Mental Health and Substance Use services.

10. VIHA contracted Volunteer Victoria to provide accounting services for programs operated by Mental Health and Substance Use services, two of which were the SuperClean and Soup-er Meals programs. Ms. Norman was involved with both of these programs for a limited period of time ending in 2016. Successful participants in the programs were provided with a training honorarium of $7 per hour. Volunteer Victoria issued stipend cheques to Ms. Norman for her participation in the programs, the last one being issued in July 2018.

11. The delegate reviewed the definitions of "employee", "employer", and "work" in section 1 of the *ESA* and concluded that Ms. Norman was not an employee. The delegate noted that Ms. Norman was a long-term mental health client of VIHA who was, for a limited period, involved in two therapeutic rehabilitation programs offered by VIHA. He found that these programs provided training and therapy for people struggling with addictions or mental health issues to assist them in obtaining employment. Participants in the program are provided with funds which were designed to defray expenses. The delegate determined that these funds were not wages because they did not represent payment for work.

12. The delegate concluded that Ms. Norman was not an employee and that no wages were owed.

ANALYSIS

13. Section 112(1) of the *ESA* provides that a person may appeal a determination on the following grounds:

- the director erred in law;
- the director failed to observe the principles of natural justice in making the determination;
- evidence has become available that was not available at the time the determination was being made.

14. Acknowledging that the majority of appellants do not have any formal legal training and, in essence, act as their own counsel, the Tribunal has taken a liberal view of the grounds of appeal. As the Tribunal held in *Triple S Transmission*, (BC EST # D141/03), while

> most lawyers generally understand the fundamental principles underlying the "rules of natural justice" or what sort of error amounts to an "error of law", these latter terms are often an opaque mystery to someone who is untrained in the law. In my view, the Tribunal must not mechanically adjudicate an appeal based solely on the particular "box" that an appellant has--often without a full, or even any, understanding--simply checked off.
>
> The purposes of the *Act* remain untouched, including the establishment of fair and efficient dispute resolution procedures and, more generally, to ensure that all parties receive "fair treatment" [see subsections 2(b) and (d)]. When adjudicating an appeal, I believe it is appropriate for the adjudicator to first inquire into the nature of the challenge to the determination (or the process that led to it being issued) and then determine whether that challenge, *prima facie,* invokes one of the statutory grounds. In making that assessment, I also believe that adjudicators should take a large and liberal view of the appellant's explanation as to why the determination ought to be varied or cancelled or why the matter should be returned to the Director.

15. Where there is any doubt about the grounds of an appeal, the doubt should be resolved in favour of the appellant. I have therefore considered whether or not the Appellant has demonstrated any basis for the Tribunal to interfere with the Determination. I conclude that Ms. Norman has not met that burden.

16. Section 114 of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind, the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:

> (a) the appeal is not within the jurisdiction of the tribunal;
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> (b) the appeal was not filed within the applicable time limit;
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> (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
>
> (d) the appeal was made in bad faith or filed for an improper purpose or motive;
>
> (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
>
> (f) there is no reasonable prospect that the appeal will succeed;
>
> (g) the substance of the appeal has been appropriately dealt with in another proceeding;
>
> (h) one or more of the requirements of section 112(2) have not been met.

Error of Law

17. The Tribunal has adopted the following definition of "error of law" set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam),* [1998] B.C.J. No. 2275 (B.C.C.A.):

> 1. a misinterpretation or misapplication of a section of the *Act* [in *Gemex*, the legislation was the Assessment Act];

2. a misapplication of an applicable principle of general law;

3. acting without any evidence;

4. acting on a view of the facts which could not reasonably be entertained; and

5. adopting a method of assessment which is wrong in principle.

18. Ms. Norman has not identified any errors of law which the delegate may have committed. In her appeal, Ms. Norman says that the Determination "discriminates against" her, causing her to continue her ongoing complaints because her "human trafficking complaints" against VIHA remain unresolved. She attached a large number of medical records to her appeal which she contends support her view that she is an employee.

19. Upon a review of the record, I find that the delegate properly applied the relevant sections of the *ESA* to the evidence before him. The evidence before the delegate led him to conclude that the Appellant did not meet the definition of employee (section 1 of the *ESA*). Although I appreciate the Appellant disagrees with this conclusion, I find no error in his analysis. The records submitted by Ms. Norman in support of her argument consist of Medical Services Plan ("MSP") charges. These charges are not evidence of payment of wages to the Appellant and do not support the Appellant's assertion that she was an employee of VIHA.

Failure to observe the principles of natural justice

20. Natural justice is a procedural right that includes the right to know the case being made, the right to respond, and the right to be heard by an unbiased decision maker. There is nothing in the appeal submission that establishes that Ms. Norman was denied natural justice.

21. After investigating the complaints, the delegate informed Ms. Norman of his preliminary conclusions in a letter dated April 9, 2019. The delegate included the correspondence he received from VIHA and invited Ms. Norman to respond to the delegate's preliminary conclusions based on those conclusions. The delegate also asked Ms. Norman additional questions to clarify her allegations, and particularly her complaint that she worked 24 hours per day, 7 days per week. Ms. Norman's responses were, in my view, non-responsive.

22. I find that Ms. Norman had every opportunity to advance her case as well as to respond to VIHA's submissions. There are no allegations, nor is there any evidence, that the delegate was biased.

23. I therefore find no basis for this ground of appeal.

New evidence

24. In *Re Merilus Technologies* (BC EST # D171/03) the Tribunal established the following four-part test for admitting new evidence on appeal:

(a) the evidence could not, with the exercise of due diligence, have been discovered and presented to the Director during the investigation or adjudication of the complaint and prior to the Determination being made;

(b) the evidence must be relevant to a material issue arising from the complaint;

(c) the evidence must be credible in the sense that it is reasonably capable of belief; and

(d) the evidence must have high probative value, in the sense that, if believed, it could, on its own, or when considered with other evidence, have led the Director to a different conclusion on the material issue.

25. I have reviewed the material Ms. Norman submitted in support of her appeal. That material includes Freedom of Information requests made to VIHA and a large number of medical records including prescription orders and MSP payments. After reviewing all of the material, I conclude that none of this information is relevant to the issue under appeal; that is, whether or not Ms. Norman was an employee of VIHA.

26. In my view, this information, even if were properly new evidence according to the test set out above, would not have led the delegate to a different conclusion on the material issue before him. None of the material submitted on appeal demonstrates that Ms. Norman was an employee.

27. Therefore, I conclude that there is no reasonable prospect that the appeal will succeed and dismiss the appeal.

ORDER

28. Pursuant to section 115 of the *ESA*, I order that the Determination, dated November 20, 2019, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal