

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Esquimalt Enterprises Ltd. operating Country Grocer
("Country Grocer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

Adjudicator: Hans Suhr

File No.: 1998/766

Date of Decision: February 5, 1999

DECISION

OVERVIEW

This is an appeal by Esquimalt Enterprises Ltd. operating Country Grocer “Country Grocer” under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated November 13, 1998 issued by a delegate of the Director of Employment Standards (the “Director”). Country Grocer alleges that the delegate of the Director erred in the Determination by concluding that Janice Parisien (“Parisien”) was entitled to compensation for length of service. Country Grocer further states that the Determination is flawed as the Delegate of the Director was not provided with all of the information.

A preliminary matter arises in this case. The appeal by Country Grocer is based on evidence they did not provide the Director prior to the Determination being made on November 13, 1998. I must first decide whether the Employer is entitled to put such evidence before the appeal panel.

FACTS

Parisien sought compensation for length of service. The information provided by Country Grocer to the delegate of the Director included the Record of Employment, daily time records, notes from Parisien’s file, and a document referred to as a written reprimand.

The delegate of the Director investigated the records and information provided by both Country Grocer and Parisien. On that basis of that investigation the delegate of the Director determined that Country Grocer owed compensation for length of service to Parisien.

The reasons for appeal set forth by Country Grocer in their letter to the Tribunal states in part:

“I am appealing the determination of Janice Parisien on the basis that not all information was provided to (the delegate of the Director) . I am enclosing the information not presented and ask the tribunal to find that she had been warned about her behaviour and therefore was terminated with just cause.”

ISSUE TO BE DECIDED

Country Grocer did not provide all the information available to the delegate of the Director prior to the Determination being issued. Is Country Grocer entitled to introduce evidence in appeal that it did not provide to the delegate of the Director during the investigation?

ANALYSIS

I begin with a review of the adjudicative process arising from the filing of a complaint. *BWI Business World Incorporated BC EST No. D050/96* discusses the basis on which the Tribunal finds the Director's investigation and determination to be quasi-judicial:

Once a complaint has been filed, the Director has both an investigative and an adjudicative role. When investigating a complaint, the Director is specifically directed to give the "person under investigation" (in virtually every case, the employer) "an opportunity to respond." (Section 77) At the investigative stage, the Director must, subject to section 76(2), enquire into the complaint, receive submissions from the parties, and ultimately make a decision that effects the rights and interests of both the employer and the employee. In my view, the Director is acting in a quasi-judicial capacity when conducting investigations and making determinations under the *Act*. [Cf. *Re: Downing and Graydon* 21 O.R. (2d) 292 (Ont. C.A.)]

The decision making process was quasi-judicial in the case before me. Country Grocer was given opportunity to make submissions to the delegate of the Director. Country Grocer, for their own reasons, chose not to provide certain information to the delegate of the Director.

The Tribunal has addressed similar situations in *Tri-West Tractor Ltd. BC EST No. D268/96* , *Kaiser Stables Ltd. BC EST No. D058/97* and many others since that point in time. The Employer did not submit certain information to the delegate of the Director during the delegates' inquiry. On appeal, it sought to rely upon that information. Most relevant to this case, however, the Tribunal would not allow an appellant who failed to provide information to the delegate of the Director during the investigation, to file an appeal on the merits of the determination. To grant standing on appeal would be entirely at odds with the quasi-judicial nature of the investigation and determination.

Country Grocer chose to not provide certain information to the delegate of the Director during the investigation. It now seeks to challenge the delegate of the Director's determination with that information it acknowledges it did not previously provide. The Tribunal will not allow that to occur. As reviewed *BWI Business World Incorporated, Tri-West Tractor Ltd. and Kaiser Stables Ltd.*, the Tribunal will not allow an employer to either completely ignore the determination's investigation or to withhold certain information and then appeal the determination's conclusions.

Country Grocer's failure to provide all information during the investigation is significant. The Determination, however, must still explain the basis of its conclusions. I am satisfied that it does that. The Determination clearly sets forth the information considered and the reasoning for the conclusions reached.

In the above circumstances, the appeal by Country Grocer is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determination dated November 13, 1998 be confirmed in all respects.

Hans Suhr
Adjudicator
Employment Standards Tribunal