

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 -

Kenneth Edward Harris
(" Harris ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No: 1999/643

DATE OF DECISION: January 17, 2000

DECISION

OVERVIEW

This is an appeal brought by Kenneth Edward Harris (“Harris”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on October 6th, 1999 under file number 090-887 (the “Determination”).

The Director’s delegate determined that Harris’ former employer, Meen-Sga-Nist Housing Society (the “employer”), owed Harris the sum of \$14,559.43 on account of unpaid regular wages, vacation pay, compensation for length and interest.

FACTS

As I understand the situation, at the point of his termination, Harris was the employer’s general manager and had held that position since the employer’s inception in 1986. Indeed, Harris and some other individuals apparently caused the employer to be incorporated as a non-profit society and, during the early years, personally financed the employer’s operations.

The employer, operating in conjunction with the Canada Mortgage and Housing Corporation (“CMHC”) provided housing for aboriginal persons in the Prince Rupert region. For the past several years, the employer and CMHC were engaged in a dispute regarding, among other things, the financial affairs of the employer. On December 18th, 1997 a receiver-manager was appointed by the B.C. Supreme Court with authority to collect rents and make repairs to certain properties owned and managed by the employer--this was an interim order to continue until January 20th, 1998 but was subsequently continued by way of another B.C. Supreme Court order issued on January 23rd, 1998. I understand that on or about June 1st, 1999 the employer’s properties were transferred to another Society.

During the course of the delegate’s investigation, the employer took the position that Harris was entitled to the monies he sought (regular wages, vacation pay and compensation for length of service) but apparently argued that CMHC ought to be held responsible for the monies in question since the employer’s own financial resources were either limited or nonexistent. Harris apparently also argued before the delegate that his unpaid wages should be paid by CMHC. The delegate rejected this submission.

GROUND FOR APPEAL

By way of a letter dated October 22nd, 1999 (appended to his notice of appeal form) Harris set out various allegations. Harris’ specific grounds of appeal are not set out with any precision in his October 22nd letter. However, so far as I can gather, Harris has two principal objections to the Determination (set out at page 4 of his October 22nd letter):

- first, there a number of employees who have unpaid wage claims and yet the Determination addressed only Harris’ claim;

- second, CMHC ought to be held responsible for payment of any unpaid wage claims.

ANALYSIS

With respect to the first issue, namely the other employees' wage claims, I first observe that this Tribunal is an *appeal* body and can only rule on appeals from determinations issued by the Director of Employment Standards (and her authorized delegates). As set out in the Determination, these other employees have not filed complaints under section 74 of the Act and thus the delegate did not address these claims in the Determination. This Tribunal is not a body with "original" jurisdiction. Unless and until unpaid wage complaints are filed by these other former employees, those complaints are then investigated and ruled on by the Director, and proper appeals are filed with the Tribunal regarding the Director's disposition of such complaints, this Tribunal is without jurisdiction to address wage claims that may or may not be filed by other former employees.

As for the second ground, the evidence before me clearly shows that Harris was employed by the employer. While it may be the case that CMHC might also have been Harris' employer (by virtue of the fact of the control it exercised over Harris and over the affairs of the employer)--and I offer no opinion whatever about the legal merits of such a submission--even if it could be said that Harris was also employed by CMHC, then such a claim would have to be addressed under federal rather than provincial law since CMHC employees fall under federal regulatory authority.

In other words, if Harris maintains that his "real" employer was CMHC, that issue will have to be addressed by way of a complaint made pursuant to the *Canada Labour Code* since the Act does not apply to employees of federal crown corporations.

Indeed, given the *raison d'être* of the employer and the apparent control exercised by CMHC over the employer, it may be that Harris' claim as against the employer also falls under federal jurisdiction. However, since that question has not been raised in this appeal, nor has it been argued before me, I do not intend to address it further.

It follows that this appeal must be dismissed.

ORDER

Pursuant to section 115 of the Act, I order that the Determination be confirmed as issued in the amount of **\$14,559.43** together with whatever additional interest that may have accrued, pursuant to section 88 of the Act, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal