

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 -

Ellerton Rudy Small (a.k.a.Rudy Small) operating as
R.S. Group Home
("the Employer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/446

DATE OF HEARING: January 15, 1998

DATE OF DECISION: January 20,1998

DECISION

APPEARANCES

Valmond Romilly	On behalf of the Employer
Ronald Wright	On his own behalf

ISSUE TO BE DECIDED

Does the “Terms of Settlement” document dated September 5, 1997 constitute a settlement agreement which should be enforced by the Tribunal?

OVERVIEW AND ANALYSIS

A delegate of the Director of Employment Standards issued a Determination on May 16, 1997 in which he found that the Employer had contravened Sections 17, 18, 45, 46, and 58 of the *Act* and ordered payment of \$25,158.55 to Ronald Wright, a former employee. The Employer appealed the Determination to this Tribunal on June 5, 1997 under Section 112 of the *Employment Standards Act* (the “*Act*”). The Tribunal held a hearing on September 5, 1997 to hear and decide the matters arising out of the Employer’s appeal.

Both parties were represented by legal counsel at the hearing on September 5, 1997 and, after counsel made their opening statements to the Adjudicator, settlement discussions commenced. Those discussions resulted in a settlement which was captured in a written “Terms of Settlement “ document which was signed by Mr. Small, Mr. Wright and the Director’s delegate. One of the terms of the “Terms of Settlement” required Mr. Small and Mr. Wright to execute a mutual release subject to the approval of their respective legal counsel.

Mr. Small and the Director’s delegate executed the “Mutual Release” but Mr. Wright did not do so.

Mr. Wright’s legal counsel wrote to the Tribunal on October 28, 1997 to inform it that she was no longer acting for Mr. Wright in this matter. She informed Mr. Small’s counsel on the same day and, at the same time, returned various documents to him, including two original copies of the partially-executed Mutual Release and the certified cheque which the Employer had drawn in favour of Mr. Wright as required by the “Terms of Settlement”.

A hearing which was scheduled for December 9, 1997 was adjourned at Mr. Wright’s written request to allow him an opportunity to retain legal counsel.

Upon receiving the Notice of Hearing (for the hearing on December 9, 1997) Mr. Small's counsel notified the Tribunal of his opposition to a "...reopening of the hearing except for the purposes of disciplining Mr. Wright for his refusal to comply with the terms of settlement". A copy of counsel's written submissions were disclosed to Mr. Wright and he acknowledged having received them in advance of the hearing on January 15, 1997.

The essence of the Employer's position is that Mr. Wright refused to comply with the "Terms of Settlement" by refusing to sign the documents and by refusing to accept the cheque which was sent by the Employer's counsel to Mr. Wright's counsel on September 24, 1997. That is, as Mr. Wright "...simply refused to cooperate with his own lawyer", the cheque and the documents were returned by Mr. Wright's legal counsel to the Employer's legal counsel.

The Employer remains willing to make payment in full to as soon as he, Mr. Wright, signs the documents as set out in the "Terms of Settlement".

A hearing was re-scheduled for and took place on January 15, 1998 at the Tribunal's offices in Vancouver. Mr. Wright was not represented by legal counsel at the hearing. At the commencement of the hearing I identified, and the parties agreed, that the first issue to be addressed was whether the "Terms of Settlement" constituted a settlement agreement which should be enforced by the Tribunal.

Mr. Romilly, on behalf of the Employer stated clearly at the hearing that the Employer was willing to deliver full payment to Mr. Wright immediately upon his compliance with the "Terms of Settlement". Mr. Wright did not accept payment on those terms.

In his submission, Mr. Wright expressed his objection to certain terms in the "Mutual Release" and asserted that "high pressure tactics" were used to secure his signature on the "Terms of Settlement". He also questioned the accuracy of certain income tax documents (T4/T4A) which had been produced by the Employer. In summary, he considered the "Terms of Settlement" to be unfair.

Upon hearing the parties' oral submissions I adjourned the hearing briefly to consider those submissions. I then rendered oral reasons as follows:

- Mr. Wright and Mr. Small were represented by legal counsel at the hearing on September 5, 1997.
- Both parties' counsel agreed to the "Terms of Settlement".
- Mr. Wright, Mr. Small and the Director's delegate signed the "Terms of Settlement".
- Mr. Small and the Director's delegate signed the "Mutual Release".
- There is no evidence of coercion or duress.

- Nothing on the face of the “Terms of Settlement” make it offensive to the *Act*.
- One of the purposes of the *Act*, as set out in Section 2(d) is “...to provide fair and efficient procedures for resolving disputes over the application and interpretation of this *Act*.”
- The Tribunal should not be willing to allow any party to resile from a duly executed settlement agreement.
- The Tribunal will issue an Order to give effect to these oral reasons.

Counsel for the Employer requested that the Tribunal give directions to the parties should an order not be complied with by a certain date. I agreed to refer the parties to the relevant provisions of the *Act*, and do so now. Section 91(3) of the *Act* states that an order of the Tribunal which is filed in a Supreme Court Registry:

“...is enforceable in the same manner as a judgment of the Supreme Court in favour of the director for the recovery of a debt in the amount stated in the order.”

I believe it is important to make some additional comments. The Tribunal expects that when parties conclude a settlement in good faith, the terms and conditions of that agreement will be respected by the parties. That is, it should not be necessary for the Tribunal to issue an order when the parties have concluded a settlement agreement. As noted above, I have decided that the parties reached a binding agreement on September 5, 1997 which was captured in the “Terms of Settlement” document.

ORDER

I hereby order, under Section 115 of the *Act*, that the Determination dated May 16, 1997 be varied to reflect the *quantum* of the “Terms of Settlement” dated September 5, 1997. I further order the parties to comply with the “Terms of Settlement” dated September 5, 1997.

Geoffrey Crampton
Chair,
Employment Standards Tribunal

GC/bls