

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act

- by -

La Societe De Les Enfants Michif

(“La Societe”)

- of a Determination issued by -

The Director Of Employment Standards

(the “Director”)

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 96/067

DATE OF DECISION: March 28, 1996

DECISION

OVERVIEW

This is an appeal by La Societe De Les Enfants Michif ("La Societe") pursuant to Section 112 of the *Employment Standards Act* ("the *Act*") against Determination #CDET 000500 and Determination #CDET 000510, decisions issued under the authority of the Director of Employment Standards and dated December 19, 1995. Determination #CDET 000510 was issued as a result of a complaint by Patti Stowe ("Stowe"), a former employee of La Societe. Stowe claimed wrongful dismissal, a failure to pay severance pay and a failure to pay other moneys owed, and was awarded \$1,213.19. Determination #CDET 000500 was issued as result of La Societe's failure to produce payroll records, required by the *Act* and Section 46 of the *Employment Standards Regulation* ("the *Regulations*"). It provides for a penalty of \$500, the amount set by the *Regulations*, Section 28.

The employer claims that the Determinations were issued in error, for a number of reasons, including bias and a denial of natural justice.

FACTS

La Societe De Les Enfants Michif is a counselling and referral service for Metis. Patti Stowe was employed in the capacity of receptionist/secretary until August 28, 1995.

As a result of the complaint by Stowe, an Industrial Relations Officer contacted the employer by telephone and requested payroll records and documents relevant to Stowe's employment and its termination. The investigating officer then met with the employer, at its office in the Whalley area of Surrey, on December 14, 1995, for the purpose of gaining access to the records. The employer refused to produce them, it giving as reason that the *Act*, like other laws of British Columbia and Canada, did not apply to La Societe by virtue of what was said to be its aboriginal status.

The investigating officer handed La Societe a Demand for Employer Records at the end of their December 14, 1995 meeting. That document ordered La Societe to produce the requested employment records concerning Stowe by December 18, 1995. The employer did not comply with the order and that led to Determination #CDET 000500 and the \$500 penalty.

Determination #CDET 000510 deals with Stowe's complaint. On the basis of records and information provided by Stowe and the Workers' Compensation Board, the employee was found to have been dismissed without just cause and without notice. The employee was awarded two weeks severance pay and other moneys, the employer having been found as well to have incorrectly calculated the amount of Stowe's final paycheck and to have incorrectly calculated moneys owed as a result of overtime work. The amount of money owed by the employer, \$1,213.19, was determined on the basis of pay-stubs, a record of employment issued by the employer, and a record of overtime supplied by Stowe.

In addition to sending the Determinations by registered mail to the employer, the Employment Standards Branch ("the Branch") hand delivered them on January 8, 1996, along with a letter, dated that day. That letter extended the deadline for appealing the Determinations from January 11, 1996 to January 16, 1996.

On receiving the appeal and documents and information from the Director of Employment Standards, the Tribunal requested written submissions. The appellant made no submission beyond its appeal.

ISSUES TO BE DECIDED

The appellant complains that it did not know the nature of the complaints against it and that it was denied its right to be heard. It alleges bias. It complains of the way that the Employment Standards Branch went about seizing moneys. And the appellant complains that it did not have reasonable time to appeal, it receiving the Determinations as late as it did. Were the Determinations issued in error?

ANALYSIS

The appellant says that it did not have sufficient time to appeal. But the appeal was in time. And if the appellant felt rushed in thinking that it had only until January 11, 1996 in which to appeal, that was not the fault of the Branch, but due to the employer's own failure to read its correspondence, the January 8, 1996 letter which moved the deadline for appeals to January 16, 1996.

The appellant says that it was not advised of the complaints against it. Clearly, a party has a right to know all complaints against it, so that it can mount a response. Did La Societe know them? I am inclined to believe on the basis of the evidence before me that the employer knew of the complaints, in substance, on first being contacted by the investigating

officer. Beyond that the evidence is that La Societe was sent a copy of Stowe's complaint, with all important details shown, on or about December 14, 1995. I conclude that the employer knew of the complaint at that time, or at least, that it had the means to know, and that it was therefore in a position to respond to all complaints against it.

The appellant says that it was denied its right to be heard and it alleges bias, matters that of particular concern to the Tribunal. But having complained that it was not given a fair opportunity to be heard, and having been given that opportunity by the independent body that is the Tribunal, the employer falls silent. It makes no case and submits no evidence in respect to any of the issues arising from Stowe's complaint. The evidence being that the employer has nothing to say on that, I am lead to the conclusion that La Societe was not denied its right to be heard.

On the point of bias I note that the employer's allegation of bias stems from the investigating officer's conduct. The officer is said to have displayed a hostility towards the employer as she went about investigating Stowe's complaint, such that she no longer appeared impartial. But the evidence before me is of an officer that went to considerable effort to secure the employer's views and information in support of its position, precisely, I conclude, so that an impartial decision could be rendered. The employer on the other hand acted so as to force a one-sided Determination, in refusing to produce records in respect to Stowe's employment and termination, an action that left the officer with only information provided by Stowe to consider. La Societe had its reasons, but important in terms of the charge of bias is the matter of whether its argument was considered and, given that it was rejected, whether the basis for that is so unreasonable as to be evidence of impartiality. As the matter is put to me, the officer's decision to reject the employer's argument that it is not covered by the *Act* appears not only reasonable but correct. Finally, I note that the complaint of bias comes after the Determinations were issued, not when the officer acted so as to create the employer's apprehension of bias. These considerations lead me to conclude that the employer's apprehension of bias is one which is not reasonably held.

The final complaint of the employer is that it was not notified of the seizure of some of its moneys by the Branch. There is no requirement for the Branch to do that. And the seizing of moneys being something that comes after the Determinations, the point is irrelevant in respect to the matter of whether those Determinations were issued in error.

The appellant not providing its records on Stowe's employment and termination, I am in no better position to determine whether Stowe was dismissed wrongfully or for just cause, or to determine whether Stowe is owed \$1,213.19 or some other amount. But that is the position that the employer has left me, as it left the investigating officer of the Branch. Finding all complaints raised by the employer's appeal to be without substance and given

Determination #CDET000510, its reasons, its calculations and nothing to the contrary, I conclude that the Determination should be confirmed.

In respect to the Determinations #CDET 000500, the evidence is that the employer did not produce records required by the *Act* and the *Regulations* and that it was ordered to do so. Given that, nothing which supports a conclusion that La Societe is not covered by the *Act* and not knowing of any good reason why La Societe need comply with the *Act* and the *Regulations*, I conclude that the Determination is in order and should be confirmed.

ORDER

I order that the Determinations #CDET 000500 and #CDET 000510 be confirmed, as Section 115 of the *Act* provides.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal

LDC:jel