

An appeal

- by -

Eugene Kuznetsov

- 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)

TRIBUNAL MEMBER: Sheldon M. Seigel

FILE No.: 2009A/013

DATE OF DECISION: April 17, 2009

DECISION

SUBMISSIONS

Eugene Kuznetsov on behalf of Employee

Andres Barker on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by the Employee, of a Determination that was issued on January 13, 2009 by a delegate of the Director of Employment Standards (the “Director”). The Complainant Kuznetsov filed a complaint under section 74 of the *Act* alleging that his employer contravened the *Act* by failing to pay regular wages. At issue was contravention of the *Act*. The Determination found that the *Act* did not apply to the complainant as a result of Mr. Kuznetsov being a person described under s.31 of the *Employment Standards Regulation*, B.C. Reg. 396/95 (Regulation). The claim was dismissed.
2. Mr. Kuznetsov submits that the Director erred in law in making the Determination, and seeks a change in the Determination.

ISSUES

3. The issues are whether or not the Director erred in law in concluding that the claimant was a person described under s.31 of the Regulation, or that the *Act* did not apply.

ARGUMENT

4. The Appellant submits that he was an employee at the relevant time and is therefore entitled to wages. In support of that proposition he provides an agreed statement of facts executed by both he and the employer. The statement identifies Mr. Kuznetsov’s salary level, the dates of unpaid wages, and calculates compensation for length of service and vacation pay. The conclusion is that the sum of \$7564.00 remains outstanding.
5. The Appellant submits:

I am not yet a professional Engineer registered with APEG BC. I am just an EIT (Engineer in Training) registered with APEG BC.
6. He says that although the *Act* does not apply to a person who has a P. Eng designation, it does not restrict the rights of a person who has EIT status and is a member of the Association.

THE FACTS AND ANALYSIS

7. A review of the Determination indicates that the Director provided ample opportunity for the parties to argue and present evidence as to the nature of the relationship between the complainant and the employer. The Determination clearly states that the employer and the employee agree with respect to all of the relevant facts relating to the employment relationship. Due to the downturn in the economy, the employer was no longer able to meet its payroll obligations. Mr. Kuznetsov was laid off, in accordance with his request, without the benefit of the outstanding wages and other monies owed.
8. The Director considered the language of s.31 of the Regulation and determined that the *Act* does not apply to an employee who is a professional engineer as defined in the Engineers and Geoscientists Act, so long as the person is carrying on the occupation governed by that act. He quotes the relevant definition in that act and concludes:

Given that Mr. Kuznetsov testified that he was an engineer who used his technical expertise to discharge his duties...I find that [he] was carrying on the practice of professional engineering as defined in the Engineers and Geoscientists Act.
9. The definition of “practice of professional engineering” is extensive and in light of the available testimony and submissions clearly encompasses the job description that Mr. Kuznetsov filled while employed.
10. I note that the Appellant did not contest this component of the decision specifically, but rather laid the weight of his submission on the fact that he is an Engineer in Training, rather than a P. Eng.
11. Section 31(f) of the Regulation states that the *Act* does not apply to:

A professional engineer, as defined in the Engineers and Geoscientists Act, or a person who is enrolled as an engineer in training under the bylaws of the council of the Association of Professional Engineers and Geoscientists of the Province of British Columbia.
12. This language specifically identifies an engineer in training who is a member of the APEG BC as excluded from application of the *Act*. The Appellant specifically identifies himself as an engineer in training who is a member of the APEG BC. The *Act* does not apply to Mr. Kuznetsov, and he is therefore not afforded the protection otherwise provided by the *Act*.
13. The Director correctly found on the evidence before him that the *Act* does not apply to the complainant.
14. I find that the Director did not make an error of law. The appeal fails.

ORDER

15. Pursuant to section 115 of the *Act*, I confirm the Determination.

Sheldon M. Seigel
Member
Employment Standards Tribunal