

An appeal

- by -

Iona Grace Jack-Dennis

- 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: Carol L. Roberts

FILE No.: 2008A/24

DATE OF DECISION: April 28, 2008

DECISION

SUBMISSIONS

Iona Grace Jack-Dennis	on her own behalf
Terry Hughes	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Iona Jack-Dennis, pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director") issued February 11, 2008.
2. Ms. Jack-Dennis worked as a home support worker for Beacon Community Services Society ("BCSS"). On November 6, 2007, Ms. Jack-Dennis filed a complaint alleging that that BCSS had contravened the Act. The complaint identified issues about a leave of absence, status of employment and return to work, WCB benefits and hours of work.
3. Following an investigation, the Director's delegate determined that Ms. Jack-Dennis was covered by a collective agreement during her period of employment and that, pursuant to section 3(7) of the Act, her complaints were to be resolved through the collective agreement between B.C. Government and Service Employees' Union ("BCGEU") and BCSS. Accordingly, the delegate stopped investigating the complaint pursuant to sections 3 and 76 of the Act.
4. Ms. Jack-Dennis contends that the delegate failed to observe the principles of natural justice in arriving at the Determination.
5. Section 36 of the *Administrative Tribunals Act* ("ATA"), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 16 of the Tribunal's Rules of Practice and Procedure provide that the tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). This appeal is decided on the section 112(5) "record", the submissions of the parties, and the Reasons for the Determination.

ISSUE

6. Did the delegate err in concluding that Ms. Jack-Dennis' complaints were to be resolved under the collective agreement and stopping her investigation?

FACTS AND ARGUMENT

7. In May, 2004, Ms. Jack-Dennis took pregnancy leave. She has not returned to work since then, although the record indicates she wishes to. She filed a number of grievances against her employer.

8. The delegate contacted the BCGEU and confirmed that Ms. Jack-Dennis' employment was covered under the collective agreement. Its representative advised the delegate that it has dealt with Ms. Jack-Dennis' grievances as well as her WCB claim.
9. Ms. Jack-Dennis alleges that the delegate did not return her calls, sent her mail to the incorrect address and informed her that she was covered under a collective agreement. Ms. Jack-Dennis says that she lives in Nitnaht Lake and that, because of travel difficulties and the absence of a telephone, she requires the delegate to "assist her" with her appeal. She also indicates in her appeal form that a BCGEU representative assisted her with her "first appeal" but that her MLA advised her to "report to the Labour Board". Ms. Jack-Dennis also alleges that she was told that she was not part of the union.
10. The delegate seeks to have the Determination confirmed.

THE FACTS AND ANALYSIS

11. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - (a) the director erred in law
 - (b) the director failed to observe the principles of natural justice in making the determination; or
 - (c) evidence has become available that was not available at the time the determination was being made
12. An appellant must show clear and convincing reasons why the Tribunal should interfere with the delegate's decision on one of the three stated grounds of appeal. An appeal is not an opportunity to re-argue a case that has been advanced before the delegate.
13. In *J.C. Creations Ltd. (Re)* (BC EST #RD317/03), a reconsideration panel of the Tribunal determined that the Tribunal should consider the substance of the appeal regardless of whether an appellant has checked off the correct boxes.
14. I have concluded that Ms. Jack-Dennis has not provided any basis for her appeal.
15. The record indicates that the delegate had attempted to contact Ms. Jack-Dennis on several occasions without success. However, his failure to do so does not constitute a failure to observe principles of natural justice. Ms. Jack-Dennis provided the delegate with sufficient information to investigate her claim, which she did. The record also discloses that a representative from BCGEU had made several unsuccessful attempts to contact Ms. Jack-Dennis.
16. The record includes a copy of an email from Dan Rowe, a staff representative of BCGEU, to the delegate indicating that although Ms. Jack-Dennis is no longer a member of the Union, she was covered by the provisions of the collective agreement while employed with BCSS.
17. Section 3 (7) of the *Act* provides that if a collective agreement contains provisions respecting certain matters, including hours of work or overtime, statutory holidays, annual vacation or vacation pay, recall termination of employment or layoff, the terms of the collective agreement apply rather than the

provisions of the *Act* dealing with those matters, and that any dispute arising respecting the application of those matters are to be resolved by the grievance procedure contained in the collective agreement.

18. I find no error in the delegate's decision to stop investigating the complaint under section 76 of the *Act*. The matters Ms. Jack-Dennis is complaining about arise out of her employment with BCSS and are covered by the collective agreement.
19. In her appeal documentation Ms. Jack-Dennis indicates that she is seeking to return to work. The record suggests that BCSS is prepared to accept her application to return, and that Ms. Jack-Dennis has been advised of that.

ORDER

20. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated February 11, 2008, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal