

An appeal

- by -

Donald Healey

- 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.: 2006A/20

DATE OF DECISION: April 12, 2006

DECISION

OVERVIEW

1. Mr. Healey originally appealed a Determination of the Director of Employment Standards (“the Director”) issued August 16, 2004. The Director’s delegate determined that Jeld-Wen, Mr. Healey’s employer, had not contravened the *Employment Standards Act* (“the Act”), and that Mr. Healey was not entitled to further wages. The delegate also determined that Jeld-Wen and another company, Willmar Windows, were not associated corporations. Mr. Healey alleged that the delegate had erred in law and failed to observe the principles of natural justice. He also contended that new and relevant evidence had become available that was not available at the time the Determination was being made.
2. I concluded that the delegate had not erred in making the factual findings he did. However, I concluded that the delegate had erred in placing an evidentiary burden on Mr. Healey to establish that Jeld-Wen and Willmar were associated corporations and in finding that Mr. Healey had not filed a complaint against Willmar. I further concluded that the delegate had failed to identify each element of Mr. Healey’s complaint and make a decision on each of those, thus denying him natural justice. (BC EST #D207/04). I found that Mr. Healey had not met the Tribunal’s test for new evidence.
3. I referred the matter back to the delegate for further investigation. In the referral back, the delegate addressed three issues: compensation for length of service, unlawful deductions and commission wages from Willmar Windows.
4. The delegate determined that Jeld-Wen had paid Mr. Healey compensation for length of service which was in excess of the statutory requirement set out in the *Act*, and that Mr. Healey was not entitled to any additional compensation. The delegate noted that documents confirming this payment were submitted and not disputed at the time of the hearing.
5. The delegate further determined that Jeld-Wen had not deducted commissions from Mr. Healey’s wages, and that no further commissions were owed.
6. Jeld-Wen did not dispute an association with Willmar for the purpose of Mr. Healey’s complaint, and the delegate reconsidered Mr. Healey’s claim that he was entitled to commissions for work done for Willmar. Following a review of the documentation provided by the parties, he was unable to conclude, on a balance of probabilities, that Mr. Healey was entitled to any commission wages.
7. Neither Mr. Healey nor Jeld-Wen or Willmar filed an appeal of the decision following the referral back.

ISSUE

8. The sole issue before me is whether the delegate has correctly determined whether additional wages are owed to Mr. Healey.

DECISION

9. The delegate had regard to the evidence of the parties in determining whether Mr. Healey was paid all wages he was entitled to. He determined that the employer had paid Mr. Healey compensation for length of service in excess of what he was entitled to. He determined that the evidence provided by Mr. Healey was insufficient for him to conclude that Mr. Healey was entitled to additional commission wages. He also determined that no commission wages were deducted from Mr. Healey's wages. Therefore, he concluded that no further amounts were owed.
10. Neither party replied to the Tribunal's request for submissions on the decision following the referral back.
11. I find no basis to interfere with the delegate's conclusions.

ORDER

12. I Order, pursuant to Section 115 of the *Act*, that the Director's referral back report, dated February 3, 2006, and the Determination dated August 16, 2004 be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal