

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Richard Ostrom
("Ostrom")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/630

DATE OF DECISION: January 22, 1997

DECISION

OVERVIEW

This is an appeal by Richard Ostrom (“Ostrom”) pursuant to Section 112 of *the Employment Standards Act* (the “Act”) against Determination No. DDET 000435 issued by a delegate of the Director of Employment Standards on October 4, 1996. In this appeal Ostrom claims that his former employee, Sheila Jackson (“Jackson”), has been paid in full.

ISSUE TO BE DECIDED

The only issue that I need address is whether or not Ostrom can appeal this Determination, which was issued under Section 119 of the *Act*, to the Tribunal.

FACTS

On September 10, 1996, an Employment Standards Officer (the “Officer”) with the Labour Services Department of the Yukon Territory wrote the Director of Employment Standards (the “Director”) and requested that she enforce a judgement against Richard Ostrom, Director of Ostrom & Kearns Management Limited.

The Officer had issued Writs of Seizure and Sale against Ostrom’s assets, but found no assets in the Yukon. The Officer requested the assistance of the Director as the last known address for Ostrom was in the province of British Columbia. The Officer provided the Director with a certified true copy of Supplementary Certificate #S-0117 which was filed with the Yukon Supreme Court under Section 75 of the Yukon *Employment Standards Act* on August 26, 1996. The Certificate indicates wages in the amount of \$2,810.62 are owed to Jackson by Ostrom.

On October 4, 1996, a delegate of the Director issued Determination No. DDET 000435, pursuant to Section 119 of the *Act*, against Ostrom requiring him to pay \$2,810.62 to Jackson.

Ostrom appealed the Determination on October 23, 1996. In his reasons for the appeal, he states:

The employee in question agreed to be paid in cash and signed a letter to that effect at the time she was paid which was witnessed by another employee. My accountant has this letter in her possession at this time. She was paid in full in cash.

The delegate argues that the Determination was properly served insofar as the Officer provided a certified true copy of the Certificate and the Director was satisfied that wages were still owed to Jackson. He further argues that Section 119(6) of the *Act* states that an appeal of a Determination made under Section 119 of the *Act* may be made only to the Supreme Court and not to the Tribunal.

Although Ostrom was provided with an opportunity to reply to the above arguments of the delegate, no reply was received by the Tribunal.

ANALYSIS

Under Section 119 of the *Act*, an employee who files a complaint in another jurisdiction, which has a reciprocal agreement with British Columbia respecting the enforcement of extraprovincial certificates, may have an order, judgement or certificate of that jurisdiction enforced in British Columbia. Similarly, an employee who files a complaint in British Columbia may have a Determination enforced in another jurisdiction.

Currently, the Yukon Territory is one of the reciprocating jurisdictions under the *Act*. The Yukon Territory may enforce an order, judgement or certificate in British Columbia by making an application to the Director which must include a certified true copy of the order, judgement or certificate. If the Director is satisfied that the wages are still owing, the Director may then issue and enforce a Determination under the *Act* for the wages.

Under subsection 6 of Section 119 of the *Act*, a person served with a Determination made under Section 119 of the *Act*, may appeal it to the Supreme Court. An appeal cannot be made to the Tribunal.

Consequently, in the case at hand, I agree with the delegate's conclusion that Ostrom cannot appeal Determination No. DDET 000435 to the Tribunal. If Ostrom wishes to appeal this Determination he can do so to the Supreme Court of British Columbia.

ORDER

I order under Section 115 of the *Act* that Determination No. DDET 000435 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal

BC EST #D0047/97