

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-

Malcolm J. Scott

(“Scott”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 96/554

DATE OF DECISION: January 30th, 1997

DECISION

OVERVIEW

This is an appeal brought by Malcolm J. Scott (“Scott”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 003858 issued by the Director of Employment Standards (the “Director”) on August 30th, 1996. The Director determined that Stanmar Property Management Ltd. (“Stanmar”) owed its former employee, Kathy Bolenback (“Bolenback”), the sum of \$9,532.62 on account of unpaid wages and interest.

FACTS

There is something of a history to this matter. On March 6th, 1996 the Director issued a Determination (No. CDET 001469) in which Bolenback’s claim for unpaid overtime wages was rejected. Bolenback appealed. Following an oral hearing Adjudicator Kempf issued written reasons dated June 28th, 1996 (BC EST #D155/96) cancelling the March 6th Determination. Adjudicator Kempf stated, in part (at page 5 of his Reasons):

“I must find that Bolenback’s claim for overtime must be allowed *based upon the hours presented by her to the Branch*. Naturally, to be deducted from any such calculation is the \$5,500.00 the employer has paid toward the overtime claim to date.” (emphasis added)

Adjudicator Kempf’s Order directed that a new Determination be issued reflecting the “calculation of overtime as set out above”.

Subsequently, Stanmar applied for reconsideration of Adjudicator Kempf’s decision. In written reasons issued November 13th, 1996 (BC EST #D321/96) I refused to cancel or vary Adjudicator Kempf’s decision.

On August 30th, 1996 Determination No. CDET 003858 (*i.e.*, the Determination now under appeal) was issued in accordance with Adjudicator Kempf’s direction. Scott filed his appeal with respect to this latter Determination on September 19th, 1996.

In my view, Scott has no status to appeal the Determination and, in any event, the matter is now *res judicata*. My reasons for so finding are set out below.

ANALYSIS

Scott's Status to Appeal

This appeal has been filed by Scott, whom I understand to be a former shareholder and director of Stanmar. At page 2 of his "Reasons" for appeal Scott states that "I have not been a share holder (sic) or a director of Stanmar Property Management since July 31, 1995." Accordingly, it would seem that Scott does not have any legal status to file an appeal on behalf of Stanmar as he is apparently not an authorized agent. Further, Scott is not the party liable under the Determination, nor is he a complainant. Thus, on that account, he similarly has no status to appeal.

Res Judicata

The doctrine of *res judicata* has been addressed by the Tribunal in *Steinemann* (EST Decision No. 180/96) and *Perfekto Mondo* (EST Decision No. D205/96).

Under the doctrine of *res judicata*, a particular matter is not to be re-litigated if the following three criteria apply:

- i) the identical issue has been previously decided;
- ii) the previous decision was final; and
- iii) the previous decision involved the same parties, or their privies.

In the present case, Scott's appeal is an undisguised attempt re-argue the same factual issues that were determined by Adjudicator Kempf. The hearing before Adjudicator Kempf dealt with the very question now raised on appeal, namely, Bolenback's entitlement to overtime wages. The parties are identical--Stanmar and Bolenback. Once Adjudicator Kempf's decision was confirmed by way of reconsideration, the matter was final, at least insofar as the Tribunal is concerned.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 003858 be confirmed as issued.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal