

An appeal

- by -

Angie Aygen Telatar  
("Telatar")

- 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

**ADJUDICATOR:** David B. Stevenson

**FILE No.:** 2004A/114

**DATE OF DECISION:** September 3, 2004

## DECISION

### SUBMISSIONS

Angie Aygen Telatar	on her own behalf
Nazeer T. Mitha and Paul D. McLean	on behalf of Sprott Shaw Community College Ltd.
Richard Saunders	on behalf of the Director

### OVERVIEW

This decision completes an appeal filed by Angie Aygen Telatar (“Telatar”) of a Determination that was issued on November 7, 2003 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded the *Act* had not been contravened and, accordingly, Telatar was owed no wages by her former employer, Sprott-Shaw Community College Ltd. (“Sprott-Shaw”).

In BC EST #D044/04 (the “original decision”), I found the Director had failed to fully address Telatar’s claim for wages in the context of the provisions of the employment contract between Telatar and Sprott-Shaw and referred the matter back to Director.

The Director has given further consideration to the claim and has issued a supplement to the Determination, dated June 14, 2004, confirming the decision made in the Determination – that Telatar is not owed any wages. The significant part of the supplement states:

I have reviewed the agreement between the parties with respect to the payment of the bonus and it is my determination that, on a balance of probabilities, Telatar is not entitled to the bonuses claimed. Telatar was to be paid the applicable bonus for exit interviews completed while she remained an employee of Shaw. Telatar claims entitlement to bonuses for graduates whose [sic] exit interviews were completed after she terminated her employment. The graduate bonus plan does not specifically make provision for entitlement to bonuses after an Admission Advisor terminates their employment. The parties however agree that bonuses are triggered by the work done conducting the exit interviews.

The final sentence records a finding that was not included in the Determination. The Determination stated the following on that point:

Clearly past and present practice at Shaw in the payment of bonuses to Advisors is upon completion of the graduate exit interview. . . . Not only did the parties confirm this practice in testimony but provided contract evidence which states the graduate bonus is paid upon successful completion of the program.

The Tribunal sought submissions from the parties on the Director’s supplement to the Determination. Both parties have filed submissions. Suffice to say, the supplement accords with the position taken by Sprott-Shaw and is disputed by Telatar.

## ISSUE

The issue remains whether Telatar has shown an error in the Determination that would justify the intervention of the Tribunal.

## ARGUMENT AND ANALYSIS

I have reviewed the submissions of the parties on the referral back and the supplement, particularly the submission made by Telatar. While Telatar disagrees with the result of the supplement – as she did with the Determination – and challenges aspects of both, she does not dispute the Director’s statement that she and Sprott-Shaw agreed the bonus was “triggered” by the work done conducting the exit interviews.

Based on the above, it is a reasonable interpretation of the employment contract that Telatar’s entitlement to any of the graduate bonuses was conditional on her being employed at the time the student graduates from the program in which he or she is enrolled. Telatar has not shown such interpretation is wrong or unreasonable.

The appeal is dismissed.

I will make two final comments. In her submission on the supplement, Telatar provided an extensive description of work performed relative to responsibilities other than the “exit interview”, suggesting her entitlement to the bonuses should, to some extent, be related to all of the work she performed. I perceive two problems with this submission, in addition to the assertion by counsel for Sprott-Shaw that these are new factual allegations. The first is a practical concern and relates to how such proportional entitlement would be calculated. The second is a legal consideration which arises from the following comments in the original decision:

The Tribunal has said that an employer and employee may, subject to the requirements of the *Act*, agree to preconditions governing the payment of money by the employer to the employee and if such preconditions are not satisfied, such money does not become wages within the definition set out in the *Act*, see *Re Cascadia Technologies Ltd.*, BC EST #D010/97 and *Re Kocis*, BC EST #D331/98 (Reconsideration of BC EST #D114/98). Such preconditions do not arise from any provision of the *Act*, but from the employment contractual.

Accordingly, as a reasonable interpretation of the employment contract makes entitlement to a graduating bonus conditional on Telatar being employed at the time a student graduates, the bonus does not become wages, and is not either earned or payable, until the condition is met.

The second comment I make is the same caveat included by the Tribunal at page 8 of *Shell Canada Products Limited*, BC EST #RD488/01 (Reconsideration of BC EST #D096/01):

It is important to note that this is not a case that can be characterized as the employer making a thinly disguised attempt to frustrate Verticchio’s right to receive the incentive in question. Nor is this a case where the employer has unlawfully terminated the employee in order to avoid paying a financial incentive that it would otherwise be contractually bound to pay. It is probable that in such circumstances, the Tribunal would be less inclined to give effect to the contractual relationship.

**ORDER**

Pursuant to Section 115 of the *Act*, I order the Determination dated November 7, 2003 be confirmed.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**