

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-

Westcoast Centre for Development Management Inc.

(“Westcoast”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 96/636

DATE OF HEARING: April 10th, 1997

DATE OF DECISION: April 16th, 1997

DECISION

APPEARANCES

Michael Lewis for Westcoast Centre for Development Management Inc.

Peter F. Glemnitz for the Director of Employment Standards

OVERVIEW

This is an appeal brought by Westcoast Centre for Development Management Inc. (“Westcoast” or the “employer”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 004301 issued by the Director of Employment Standards (the “Director”) on October 11th, 1996.

The Director determined that Westcoast owed its former employee, William J. Hatton (“Hatton”), the sum of \$14,390.19 on account of unpaid wages (\$12,325.58), compensation for length of service (one weeks’ wages in the amount of \$1,410.28) and interest (\$654.33).

This appeal was heard in Port Alberni, B.C. on April 10th, 1997 at which time I heard evidence from Michael Lewis, the Managing Director of Westcoast, and submissions from Peter Glemnitz, on behalf of the Director. Hatton, who now resides in Minneapolis, Minnesota, did not appear at the hearing. In a letter to the Tribunal, dated March 27th, 1997, Hatton indicated that he would not be able to attend the appeal hearing but that he nonetheless wished the hearing to proceed as scheduled.

ISSUES TO BE DECIDED

Among the numerous matters raised by Westcoast in its notice of appeal are two specific issues I have jurisdiction to address.

First, Westcoast says that Hatton’s claim for unpaid wages is based on a fundamental misunderstanding of his 1995 T-4 record (Statement of Remuneration Paid).

Second, Westcoast says that it does not owe any compensation for length of service under section 63(1) of the *Act* because Hatton was not terminated; rather he voluntarily tendered his resignation on or about November 30th, 1995 and subsequently left the employ of Westcoast on or about January 30th, 1996.

FACTS

Westcoast is a firm that provides training and consulting services to a variety of organizations; according to Michael Lewis, Westcoast is in the business of “community economic development and investment”. Westcoast has provided its services to both public and private organizations including a number of aboriginal organizations. Hatton’s responsibilities with Westcoast were to develop client accounts and to provide consulting, training and other related services to existing and new clients.

The matter now before me is part of a larger ongoing dispute between the parties; a dispute that now has been taken to the B.C. Supreme Court (*Westcoast Centre for Development Management Inc. v. William J. Hatton*; Nanaimo Registry No. S14814). Although the pleadings have been closed in that latter action, no discoveries have been conducted and the matter has not been set for trial.

The dispute between the parties arises out a series of agreements between Westcoast, Hatton, William J. Hatton & Associates Ltd. (“Associates”) and DMI Development Management Institute (“DMI”). Broadly speaking, in July 1995 Westcoast acquired Associates and DMI; Hatton was put on the Westcoast payroll effective July 1st, 1995.

As an adjudicator appointed pursuant to the provisions of the *Employment Standards Act*, I only have jurisdiction to deal with the dispute between the parties in the context of the *Act*; I do not have the jurisdiction to make any determinations with respect to the various claims and counterclaims that arise out of the agreements of purchase and sale entered into between the parties.

In a complaint filed with the Employment Standards Branch on May 1st, 1996, Hatton alleged that (see “Section E: Details of Your Complaint”):

I did not receive termination pay. During my employment with [Westcoast] an amount equal to 15% of my gross income was withheld from my monthly pay. These funds were to be paid to me before the end of February 1996 so I could deposit them into a Registered Retirement Savings Plan. Box 14 of my 1995 T4 from Westcoast specifies the amount as \$12,325.58. This amount has never been paid to me. I would like it to be paid now.

ANALYSIS

I propose to deal with the unpaid wage claim and the claim for termination pay separately.

The Unpaid Wage Claim

It would appear that Hatton's claim is predicated, in large measure, on a fundamental misunderstanding regarding his 1995 T-4 record issued by Westcoast. Box 14 of the form ("Employment income before deductions") does not show a figure, as alleged by Hatton in his original complaint, of \$12,325.58; rather the actual figure is \$33,515.58. Box 24 of the same T-4 shows a figure of \$21,170.00 for "UI insurable earnings". The difference between these two figures is \$12,345.58--I believe this is the figure that Hatton refers to in his complaint (albeit that there is a \$20 difference--perhaps an arithmetic error on Hatton's part?).

The lower "UI insurable earnings" figure is solely attributable to the calculation rules established by federal law--not all actual earnings are "insurable earnings" for purposes of the federal *Unemployment Insurance Act*. For example, in 1995 the maximum weekly "insurable earnings" was \$815.

However, Mr. Lewis, on behalf of Westcoast, did acknowledge that Hatton's assertion with respect to the withholding of moneys for purposes of later transfer to an R.R.S.P. is correct. The total amount withheld was \$4,372.40 for calendar year 1995 and a further \$735.80 for January 1996 (for a final total of \$5,108.20). These moneys have not been paid to Hatton as Westcoast asserts a right of "set-off" as a result of its claims against Hatton which are set out in the previously noted B.C. Supreme Court action.

Nevertheless, this "counterclaim" or "set-off" is not properly before me and I do not have the jurisdiction to make any ruling with respect to that aspect of the parties' (now failed) business relationship. These funds were deducted from Hatton's wages to be used for a specific purpose--in that sense, the funds could be said to be impressed with a constructive, if not an actual, trust--and Hatton is entitled to have these funds paid to him [see section 21(1) of the *Act*].

The Termination Pay Claim

The evidence before me, and Hatton's own complaint, suggest that he voluntarily resigned his employment with Westcoast. The Employment Standards Branch's complaint form sets out four choices in section C--"Still employed"; "Quit"; "Fired"; or "Laid off". Hatton placed a checkmark in the box noted "Quit". The evidence of Michael Lewis is that Hatton tendered his resignation on November 30th, 1995, effective December 1st, 1996, but was subsequently persuaded to extend his effective resignation date to January 30th, 1996.

There is no evidence before me, nor has Hatton ever alleged, that Hatton was constructively dismissed.

In light of these circumstances, and in view of section 63(3)(c) of the *Act*, Hatton was not entitled to any compensation for length of service and, in my view, the Determination is in error in providing for such an award.

ORDER

Pursuant to Section 115 of the *Act*, I order that Determination No. CDET 004301 be varied in the amount of \$5,108.20 together with interest to be calculated by the Director in accordance with Section 88 of the *Act*.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal