

An appeal

- by -

Craig Edgar
("Edgar")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2002/073

DATE OF DECISION: May 8, 2002

DECISION

OVERVIEW

This is an appeal filed by Craig B. Edgar (“Edgar”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Mr. Edgar appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on September 25th, 2001 (the “Determination”).

Mr. Edgar filed an unpaid wage complaint claiming vacation pay, statutory holiday pay and compensation for length of service from his former employer, Weyerhaeuser Company Limited (“Weyerhaeuser”). By way of the Determination, the Director’s delegate dismissed Mr. Edgar’s complaint on the grounds that Mr. Edgar ceased to be a Weyerhaeuser employee as of June 24th, 1999; he did not perform any “work” for, nor did he receive any “wages” from, Weyerhaeuser thereafter; and, finally, his employment-related claims were finally resolved by way of an agreement entered into between Edgar, his union (IWA Canada, Local 2171) and Weyerhaeuser on January 14th, 2000.

EXTENSION OF THE APPEAL PERIOD

As noted above, the Determination was issued on September 25th, 2001, however, Mr. Edgar’s appeal was not filed until November 29th, 2001 by which time the governing appeal period [see section 112(2) of the *Act*] had expired. Mr. Edgar applied for an extension of the appeal period pursuant to section 109(1)(b) of the *Act*.

This latter application came before the Tribunal’s vice-chair who, after considering the parties’ submissions, issued a decision issued on February 18th, 2002 (BC EST # D076/02) extending the appeal period to November 29th, 2001. Thus, Mr. Edgar’s appeal is now before me for a determination on its merits.

By way of a letter dated April 15th, 2002 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on the parties’ written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575). I have before me written submissions from Mr. Edgar, Weyerhaeuser’s legal counsel and the Director’s delegate.

THE PARTIES’ POSITIONS

Mr. Edgar’s Position

In a letter dated November 26th, 2001 Mr. Edgar set out the basis of his unpaid wage claim as follows:

“...I received wages from Weyerhaeuser Co. Ltd. from March 2000 to March 2001. The total of my salary was \$40,000.

The \$40,000 is a salary earned over a one year of employment at Weyerhaeuser Co. Ltd. The employer has an obligation to pay holiday pay of [sic, on?] the basis of this earned income, but have refused to do so. This is the basis of my complaint.

My status over this period of employment was that of a salaried employee on an authorized leave of absence. This is clearly within the definition of The Employment Standards Act definition of 'employee' which includes

(9) [sic, (d)] a person on leave from an employer.

My only requirement to the employer was to remain of [sic, off?] the job site, and I was provided with the option and financial support to attend the College program of my choice in order to facilitate my return to the work outside of the cedar industry. An industry to which I had become allergic...

I was not allowed on the job site. I was provided a one year salaried position to make a transition into another line of employment after a termination without cause...

As an employee I am entitled to the Statutory Holidays. I have not been paid for these holidays.

As an employee I am entitled to Holiday pay. I have not been paid holiday pay.

As an employee I am entitled to Severance pay. I have not been paid severance pay.

I was a [sic] employee for Weyerhaeuser from September 17, 1987 until June 24, 1999. I was terminated without cause on June 24, 1999. I was a unionized employee, and was covered by the Labour Relations Act [sic, Code] until January 14, 2001, upon which the union, the employer, and Mr. Kelleher negotiated the Settlement Agreement here included. I was an employee under the LR Act, until that moment. In less that [sic, than?] 13 weeks I was re-employed by Weyerhaeuser.

There was not a 13 week break in service as under the Employment Standards Act to effect termination as defined within this Act. The Act does not recognize termination's [sic] without cause as a justifiable means of breaching the Act--or denying severance...I was also terminated without cause, under the LR Act. My length of employment ended while covered by the ES Act upon my completion of employment in March 2001.

The Settlement Agreement is a multiparty contract, of which none of the signatories has the right to agree to standards below the ES Act. Any overt effort to do so is prohibited, and any agreement which inadvertently does so, is a constructed effort and also prohibited...

I am asking to be made whole. Full severance pay, holiday pay, and statutory holidays."

In further support of his position, Mr. Edgar submitted a Record of Employment ("ROE")--a document that Weyerhaeuser was obliged to issue under federal law--dated May 10th, 2001. The ROE indicates that Mr. Edgar's first day of work was March 10th, 2000; his final pay period ended on March 8th, 2001; he was on "long term disability"; and would not be returning to work. The ROE also indicates, in the "Comments" section the following: "Payment re one year fixed term contract".

The Position of the Director and Weyerhaeuser

The Delegate's principal submission is set out in a letter to the Tribunal dated March 21st, 2002. The Delegate, while acknowledging that Edgar received payments from Weyerhaeuser during the period from March 2000 to March 2001, asserts that such payments were not "wages" paid for "work", but rather

payments made in accordance with a settlement agreement with respect to a number of work-related claims. Further, the delegate submits:

“...Mr. Edgar’s claims against Weyerhaeuser relating to the termination of his employment have been resolved in another proceeding, by way of the settlement reached in January 2000 under the guidance of Mr. Kelleher. The settlement agreement provides that Mr. Kelleher retains jurisdiction to resolve any dispute...

There was a proceeding before the Labour Relations Board regarding Mr. Edgar’s termination, which resulted in a mediated settlement, with jurisdiction of any dispute retained by the mediator, Mr. Kelleher. Accordingly, the Director submits that she had statutory authority by Section 76(2) to discontinue the investigation under the Act, as the subject of this complaint has been dealt with in another proceeding.”

Subsections 76(2)(e) and (g) of the *Act* state that:

76. (2) The director may refuse to investigate a complaint or may stop or postpone investigating a complaint if...
- (e) a proceeding relating to the subject matter of the complaint has been commenced before a court, tribunal, arbitrator or mediator...
 - (g) the dispute that caused the complaint is resolved.

Weyerhaeuser’s legal counsel supports the Director’s submission with respect to the merits of the appeal.

ANALYSIS

In my view, the Delegate did not err when she dismissed Edgar’s unpaid wage complaint. The material before me shows that Edgar’s employment with Weyerhaeuser was terminated on or about June 24th, 1999. Thereafter, his union apparently grieved the dismissal and Edgar also filed a complaint under the B.C. Human Rights Code. Mr. Edgar’s various complaints came before Mr. Kelleher for purposes of mediation. That mediation process proved successful and a formal written settlement agreement was entered into between Weyerhaeuser, Edgar and his union (IWA-Canada, Local 2171) on January 14th, 2000.

Pursuant to this latter settlement agreement, Weyerhaeuser agreed to pay Edgar the sum of \$5,500 in settlement of his Human Rights Code complaint. Weyerhaeuser also agreed to a payroll continuance (and to reimburse some tuition expenses) for one-year period. However, the agreement clearly indicates that Edgar was not being returned to his former bargaining unit position and that the monies paid by Weyerhaeuser were to be paid as part of a full and final settlement of Edgar’s claims against Weyerhaeuser. Edgar, for his part, expressly agreed that his earlier June 24th, 1999 termination remained in effect (Edgar’s placement on the payroll was simply a mechanism to provide for payment of the settlement funds) and Edgar further agreed to withdraw “all grievances and the Human Rights Complaint”. Finally, the agreement states that Mr. Kelleher “will retain jurisdiction to resolve any dispute” between the parties and with respect to the settlement agreement.

Accordingly, although Edgar was placed on the payroll for a one-year period, he was not placed on the payroll as an “employee” as defined in section 1 of the *Act*, nor was he providing any services in the nature of “work” to Weyerhaeuser during the one-year salary continuance period. Although the funds

paid to Edgar by Weyerhaeuser were subject to statutory deductions and remittances, and were and taxable in his hands (as required by federal tax law), those circumstances do not convert the funds into “wages” for purposes of the *Act*.

During the one-year salary continuance period, Edgar was not “on leave”; his earlier termination remained in effect. The settlement funds paid to Edgar amounted to well in excess of the amount he would otherwise have been entitled to under the *Act* as compensation for length of service. Since the settlement funds were not paid as “wages”, and he was not an “employee” (for purposes of the *Act*) during the salary continuance period, Edgar was not entitled to any additional monies on account of vacation or statutory holiday pay.

In my opinion, the Delegate appropriately exercised her jurisdiction under section 76(2) of the *Act* in refusing to continue her investigation with respect to Mr. Edgar’s unpaid wage complaint.

ORDER

Pursuant to sections 114(1)(c) and 115 of the *Act*, I order that the appeal be dismissed and that the Determination be confirmed.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal