

**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 -

Peter Eckard  
("Eckard")

and by  
Mira Bogdanavic  
operating as MIRA B. ACAD  
("Bogdanavic")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** C. L. Roberts

**FILE NO.:** 96/236

**DATE OF HEARING:** July 2, 1996

**DATE OF DECISION:** July 12, 1996

## DECISION

### APPEARANCES

Peter Eckard	On his own behalf
Mira Bogdanovic	On her own behalf
Ron Corrigan	For the Director

### OVERVIEW

This is an appeal by both Peter Eckard ("Eckard") and Mira Bogdanovic operating as MIRA B. ACAD ("Bogdanovic"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against Determination #CDET 001703 which was issued on March 21, 1996. The Director's delegate found that the Bogdanovic had contravened Section 17(1) of the *Act* in not paying the employee wages for hours worked. The Delegate determined however, that because the employee did not file the complaint within the statutory time limits provided under the old Act, and the *Act* had no retrospective effect, the recovery of wages was statute barred.

The Director's delegate also determined that Section 63(1) of the *Act* was violated when Bogdanovic failed to pay compensation for length of service upon termination of employment. The Determination found that Bogdanovic owed \$908.51 to Eckard.

### ISSUE TO BE DECIDED

There are two issues on appeal:

- 1) Whether Eckard's right to recover wages is statute barred. Eckard disputes the findings with respect to the interpretation of the retrospective application of the legislation; and
- 2) Whether the Director's delegate correctly determined that Bogdanovic had condoned the actions of Eckard and had established no other grounds for terminating him. Bogdanovic contends that Eckard was properly terminated for cause, and that no compensation is owing.

### FACTS

Eckard was employed by Bogdanovic, January 31, 1995 to December 28, 1995.

Although Bogdanovic contended that Eckard was merely being 'observed' for the purposes of determining whether he was competent for the job, no appeal was taken to the Determination that Eckard was in fact working, or was in training for the purpose of the employer's business, and was

owed wages. Bogdanovic did argue in the hearing however, that Eckard was merely being 'assessed', and that there was no benefit to her to have him work two weeks for no pay.

The Director's delegate found that as Eckard did not file his complaint regarding unpaid wages until January 5, 1996, he was statute barred from recovering those wages.

Eckard, while in Bogdanovic's employ, submitted a bid for work he knew, or ought to have known, Bogdanovic was also bidding on. Although the Director found this to be a breach of trust which constituted grounds for dismissal, he determined that as Bogdanovic failed to discipline or terminate the employee until one month after the breach, she had condoned the actions and could not summarily dismiss him without further warning, and ordered payment of compensation.

## **ANALYSIS**

I have reviewed the documents submitted by the parties in filing the appeal, the Determination and the submissions of all parties in arriving at my decision.

On the basis of the evidence presented, I confirm the decision of the Director's delegate that Eckard is statute barred from recovering wages.

I also confirm the Determination that the Employee was not properly terminated and is entitled to compensation for service.

I shall deal with each issue separately.

## **Wages**

Eckard was hired on January 31, 1995 and performed work for the employer without pay until February 13, 1995. No claim for wages was filed until after his employment was terminated in December, 1995. Eckard contends that he could not have filed a complaint previous to that, as to do so would have placed his employment in jeopardy.

Although Bogdanovic argued that Eckard was merely in 'assessment' rather than in 'training', it is apparent that Eckard did work for her benefit for that two week period. Bogdanovic clearly identified the relationship as one of an employee/employer, indicating, in her letter of January 31, 1996 to Eckard, that it

"...confirmed our telephone conversation regarding the terms of your employment with MIRA B. ACAD. Your first term of employment will be from January 31 to February 13, 1995. Your hours of work will be...This period will be without pay, as we agreed..." (my emphasis)

The Determination found that Eckard was an employee, and entitled to be paid.

An employee is defined by Section 1 of the *Act* to include

- (b) a person an employer allows, directly or indirectly to perform work normally performed by an employee, and
- (c) a person being trained by an employer for the employer's business.

Section 4 of the *Act* provides that any agreement to waive the requirements of the *Act* is of no effect. As a consequence, in spite of Bogdanovic's characterization of the relationship, or Eckard's 'agreement', I am unable to find that the Determination was in error concerning Eckard's entitlement to wages.

Eckard filed his complaint after the current *Act* came into effect. The contravention of the legislation arose under the old legislation, which was repealed on November 1, 1995. The Director's delegate found that as the complaint had not been filed within the 6 month time period provided under the old Act (August 11, 1995), the complaint was untimely and any recovery of wages was statute barred.

The current *Act* came into force November 1, 1995. The previous *Act* required claims for wages to be filed within 6 months of the alleged violation. Although the new *Act* abolishes the statutory time limits for filing claims for lost wages, the time limits in which to file a complaint were not extended in the transitional provisions of the new legislation, unlike other matters which had been the subject of Director's orders or decisions.

Statutes are presumed to be intended to apply to future acts and conditions. Therefore, a statute, other than one dealing with procedure, will not be held to operate retrospectively unless a clear intention that it should do so is expressly provided for, or arises by necessary implication. This is particularly so where a retrospective interpretation would lead to an interference with existing rights. The intention to make a statute retrospective must appear from the words of the statute itself.

There is no express provision in the *Act* which imposes a retroactive obligation on the employer to pay wages for complaints filed after the six month time period provided for under the previous Act. While I recognise Eckard's practical difficulty in filing a complaint earlier than he did. However, as the *Act* does not have retrospective application in this respect, I am unable to find the Determination to be in error.

I deny Eckard's appeal.

**Severance pay**

Section 63 of the *Act* provides that an employer is liable to compensate an employee for an amount equal to two weeks wages as compensation for length of service unless, among other things, the employee is dismissed for just cause.

The Director found that Bogdanovic had not substantiated "just cause" for termination.

Bogdanovic contends that she had sufficient grounds on which to terminate Eckard's employment, including conflict of interest, use of confidential information, loss of trust and lack of ethics.

The onus is on Bogdanovic at first instance to establish just cause. Just cause includes criminal acts, gross incompetence or a significant breach of workplace policies. It also includes minor infractions of workplace rules, or unsatisfactory conduct where the conduct is repeated despite clear warnings to the contrary and progressive disciplinary measures.

After being advised by Eckard that he had submitted a bid on a contract Bogdanovic had also bid on, Bogdanovic gave him some advice on the contract rates. Rather than disciplining Eckard immediately, Bogdanovic permitted him to work for an extra month before terminating his employment. No punishment or warnings were issued to Eckard at the time he was found to have breached Bogdanovic's trust. He was not reprimanded for his conduct prior to the dismissal or advised that his job was in jeopardy. The Director's delegate found that this constituted condemnation of the action, following which new grounds would have to exist to terminate him immediately.

I am satisfied that although immediate dismissal might have been warranted on November 30, it was not justifiable one month later. As Bogdanovic not only condoned Eckard's actions but perhaps even encouraged them, I am unable to find that the Director's decision that the employer could not rely on the alleged 'breach of trust' one month later as grounds for dismissal, to be in error.

Accordingly, Bogdanovic's appeal is also denied.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination CDET #001703 be confirmed.

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**Carol Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**  
CL:nc