Employment Standards TRIBUNAL

An appeal

- by -

Rodney B. Laga
("Laga")

- 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.: 2003A/102

DATE OF DECISION: June 9, 2003

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the *"Act"*) brought by Rodney Laga ("Laga") of a Determination of the Director of Employment Standards (the "Director") dated March 11, 2003.

Laga had filed a complaint with the Director alleging he was owed wages from Dale Coulter operating as Lock Stone Landscaping ("Coulter") and Peter Ahern operating as Stone Age Cobblestones ("Ahern"). The Determination concluded that Laga was not an employee of either Coulter or Ahern, ceased investigating and closed the file on the complaint.

Laga has filed this appeal on the grounds that the Director failed to observe principles of natural justice and evidence has become available that was not available at the time the Determination was made.

The Tribunal has decided that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ISSUE

The issue in this appeal is whether Laga has shown the Director failed to observe principles of natural justice or in the alternative, erred on the facts in deciding he was not an employee of either Coulter or Ahern for the purposes of the *Act*.

FACTS

The Determination is brief and was issued following a complaint hearing by the Director which Laga failed to attend. Laga says in the appeal that he was unable to attend because of an employment interview, although no details and no other information relating to his failure to attend is provided.

Coulter or Ahern attended the complaint hearing and gave evidence. The Determination states:

> Both Peter Ahern and Dale Coulter gave evidence that at no time had the complainant worked for either of them as an employee, sub-contractor or self employed person. Both Mr. Ahern and Mr. Coulter stated the complainant worked for at the same job site as them in May 2001 however the complainant worked for a different company. It was coincidence that the complainant happened to be working at the same job site as they were, however there was no relationship in terms of the complainant performing any duties for them. They were only at this job site for a short period of time.
>
> Both Mr. Ahern and Mr. Coulter state they have no records pertaining to the complaint, as the complainant never worked for them in any capacity.

In its findings and analysis, the Determination states:

> The self-help kit indicates the complainant performed work in May, June, July and August of 2002, and he was paid $1,910.00. The complaint form indicates there was some regular wages; overtime wages and vacation pay still outstanding, however neither the self-help kit nor the complaint form includes any record of dates or hours worked by the complainant. The complaint form does not give any indication of addresses where the complainant alleged he performed work for the employer.

The record contains only the self-help kit and the complaint form. These are apparently the only documents Laga had provided to the Director. The reply submissions from Coulter, Ahern and the Director all note a failure by Laga to attend a mediation session on his complaint that was held approximately one month before the complaint hearing which, as noted above, he also failed to attend.

Laga has filed the second page of a letter from Canada Customs and Revenue Agency ("Revenue Canada"), which indicates a conclusion that Laga was "employed in insurable and pensionable employment with Ahern. This conclusion has been appealed by Ahern. The letter does not speak to the possibility of any employment relationship between Laga and Coulter.

ARGUMENT AND ANALYSIS

Laga says the Director failed to observe principles of natural justice. The appeal is not specific on how the Director failed in this regard, but Laga raises two matters in the appeal: that the Determination was "based on dishonest, unstable and delinquent employer's word"; and that he was unable to attend the complaint hearing because of an "employment priority". I can find no basis in either of those two matters that establishes the Director failed to observe principles of natural justice in dealing with Laga's complaint. The material indicates Laga had at least two opportunities to be heard directly in respect of his complaint and failed to appear on either occasion despite being given adequate notice of both opportunities. The material on file indicates that Laga never communicated with the Director concerning his failure to attend either the complaint hearing or the earlier mediation session, either before or after he failed to attend.

The Director received and gave consideration to the information Laga did provide in support of his complaint, but found it sufficiently lacking in particulars to be given much weight in the face of the evidence given by Coulter and Ahern. There was nothing about the process that interfered with the opportunity for Laga to present his case and challenge the position taken by Coulter and Ahern. There was nothing, in the circumstances, unfair about the process.

The Determination was based on the record. A review of that record indicates the Director's decision was entirely justified. Laga says, however, there is new evidence that was not available at the time the Determination was made. While I accept that the ruling itself was not available at the time of the Determination, I do not accept that the "evidence" on which Revenue Canada may have relied was not available. That "evidence" appears to have been information provided by Laga. And while I agree the ruling has some relevance to the issue of Laga's employment status with Ahern, I am not satisfied it would result a different conclusion on that issue. For these reasons, I do not accept the Revenue Canada letter as evidence on the appeal.

Even if I had accepted the letter as fresh evidence, I would not have given the ruling made in that letter any weight. The Tribunal has consistently said that decisions made by Revenue Canada or Human Resources Development Canada, while having some value, are not determinative of an individual's status under the *Act*, as they interpret different statutes. I note the following comment from the Tribunal's decision *Profile Marble & Bath Ltd.*, BC EST #D055/97:

> Morrice says that the Revenue Canada ruling also establishes his status as an employee, but I disagree. First, the Revenue Canada ruling makes a determination for income tax purposes and this has nothing to do with the employee's status under this legislation. Second, the evidence upon which these conclusions were based is not set out in the letter. Consequently, I give that document no weight.

Similarly, the letter provided with the appeal gives no indication of the "evidence" upon which the ruling was made. It is probable it was based on little more than assertions made by Laga and those assertions have not been proved. As well, whatever "evidence" was provided to Revenue Canada, that "evidence" was not provided to the Director and the ruling itself is under appeal based on the results of an audit which has, apparently, reached a different conclusion than what is contained in the letter.

Laga has not shown any error and the appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 11, 2003 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal