

An appeal

- by -

Rosemary Anne Goacher

- 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 (as amended)

TRIBUNAL MEMBER: Carol L. Roberts

FILE No.: 2005A/186

DATE OF DECISION: December 8, 2005

DECISION

SUBMISSIONS

Rosemary Goacher	on her own behalf
Ruth Atterton	on behalf of the Director of Employment Standards
Gordon Runge	on his own behalf

OVERVIEW

1. This is an appeal by Rosemary Anne Goacher pursuant to Section 112 of the *Employment Standards Act* (“the Act”), against a Determination of the Director of Employment Standards (“the Director”) issued September 21, 2005.
2. Ms. Goacher worked as a care provider for Gordon Runge from November 22, 2004 until February 12, 2005. Ms. Goacher complained that she was owed regular wages and annual vacation pay.
3. The Director’s delegate investigated Ms. Goacher’s complaint and determined that the *Employment Standards Act* did not apply to her complaint since she fell within the definition of a “sitter” under the Act. The delegate ceased investigating the complaint and closed the file.
4. Ms. Goacher contends that the delegate failed to observe the principles of natural justice in making the Determination, and seeks to have the Tribunal change the decision.
5. Although Ms. Goacher sought an oral hearing, I am satisfied that this matter can be decided based on the written submissions of the parties.

ISSUE

6. Did the Director’s delegate fail to observe the principles of natural justice in determining that the Branch had no jurisdiction over the complaint?

THE FACTS AND ARGUMENT

7. Mr. Runge is paralyzed from the neck down and requires regular assistance. Mr. Runge receives funding from the Choices for Supports in Independent Living Program (CISL), and employs his own staff from those funds.
8. Mr. Runge employed Ms. Goacher as a care provider. The delegate found that Ms. Goacher arrived at Mr. Runge’s residence in the evening, cook him dinner and assist him to bed. She slept at Mr. Runge’s residence, and would provide him with assistance during the night if he required it. Day staff would arrive between 7:30 and 8:00 a.m.

9. Ms. Goacher contended that Mr. Runge was receiving funds from CISL to cover her shift for 16 hours and was not paying that money to her. She agreed that she was not a residential care taker, a night attendant or a live in support worker. She also agreed with the delegate that her duties would fall within the definition of “sitter” in the *Employment Standards Regulations*.
10. According to the delegate, Ms. Goacher was advised that, if she fell within the definition of a sitter, the *Act* would not apply to her complaint, and that she agreed she would withdraw her complaint and pursue a remedy elsewhere. Although the delegate forwarded Ms. Goacher with two withdrawal forms, Ms. Goacher did not return either one of them.
11. The delegate reviewed the definitions of “night attendant”, “residential care worker” and “live in support home worker”, and found that both Mr. Runge and Ms. Goacher agreed that she did not fall within those definitions. The delegate concluded that, since Ms. Goacher was a “sitter”, she had no jurisdiction to take any further action and closed the file.
12. Ms. Goacher says that withdrawing her complaint assists Mr. Runge to “continue to break the law” by taking government funding for himself. She says she is not a baby sitter and should be paid for her full 16 hour shift. She says that Mr. Runge is committing fraud by taking government money that belongs to her.
13. The delegate contends that she did not fail to observe the principles of natural justice in making the Determination. She submits that she provided Ms. Goacher with the definitions of “live-in home support worker” “night attendant” “residential care worker” as well as the definition of “work” and “sitter” on July 13, 2005, and advised Ms. Goacher that, if she fell within the definition of “sitter” she would be excluded from the protections of the *Act*. She also asked Ms. Goacher to contact her if she had any questions. She says she spoke with Ms. Goacher on July 27, 2005 at which time Ms. Goacher agreed that the work she performed fell within the definition of sitter, but that Ms. Goacher never completed a complaint withdrawal form.
14. The delegate submits that she never found that Ms. Goacher was a “baby sitter”. She argues that the appeal should be dismissed.
15. Mr. Runge outlined Ms. Goacher’s employment duties and says that he did not breach his employment contract with her.

ANALYSIS AND DECISION

16. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - (a) the director erred in law
 - (b) the director failed to observe the principles of natural justice in making the determination; or
 - (c) evidence has become available that was not available at the time the determination was being made

17. The burden of establishing the grounds for an appeal rests with an Appellant. Ms. Goacher must provide persuasive and compelling evidence that the delegate failed to observe the principles of natural justice. An appeal is not an opportunity to re-argue a case that has been advanced before the delegate.
18. I find the appeal without merit.
19. Principles of natural justice are, in essence, procedural rights that ensure parties a right to be heard by an independent decision maker. The principles include a requirement that decision makers must base their decisions, and be seen to be basing their decisions, on nothing but admissible evidence (the rule against bias). Ms. Goacher does not specify how the delegate denied her the right to be heard.
20. Ms. Goacher's appeal submission is, in essence, an argument that the method the government uses to provide funds to persons in need of personal care is open to abuse. Whether that is the case is not the basis for an appeal of a Determination of the Director of Employment Standards. The *Employment Standards Act* sets out categories of employees who are entitled to the protections of the *Act*. The delegate has determined that Ms. Goacher does not fall within one of those categories. Ms. Goacher does not appear to dispute that, and provides no evidence the delegate's conclusion is in error in this respect.
21. In light of what appears to be Ms. Goacher's concession that she is a "sitter" as that is defined in the *Regulations*, the *Act* does not apply to her complaint. I find no error in the delegate's decision to find that she had no jurisdiction over the complaint.
22. The appeal is dismissed.

ORDER

23. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated September 21, 2005, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal