EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the *Employment Standards Act*, R.S.B.C. 1996, c. 113

-by-

Alnor Services Ltd.

("Alnor" or the "employer")

- of a Determination issued by -

The Director of Employment Standards

(the "Director")

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	99/018
DATE OF DECISION:	May 26, 1999

DECISION

OVERVIEW

This is an appeal brought by Alnor Services Ltd. ("Alnor" or the "employer") pursuant to section 112 of the *Employment Standards Act* (the *"Act"*) from a Determination issued by a delegate of the Director of Employment Standards (the "Director") on December 21st, 1998 under file number 16212 (the "Determination").

The Director's delegate determined that Alnor owed its former employee, Patrick Chapman ("Chapman"), the sum of $4,234.75 on account of unpaid wages and interest.

Alnor appeals on the sole ground that the delegate miscalculated Chapman's unpaid wage entitlement; indeed, Alnor takes the position that it has now overpaid Mr. Chapman by some $830.93.

FACTS

According to the "Undisputed Facts" set out in the Determination, Chapman was employed by Alnor from January 12th, 1995 to February 4th, 1997. Chapman's employment was governed by the provisions of the *Skills Development and Fair Wage Act.*

Chapman filed an unpaid wage complaint with the Employment Standards Branch on January 24th, 1997. I understand that the delegate and the employer's solicitor had various discussions concerning not only Chapman's complaint but also complaints filed by two other Alnor employees. On April 23rd, 1998, the employer's solicitor wrote to the delegate setting out his position regarding the two other complaints and submitting that Chapman was owed $3,388.21 on account of his unpaid wage claim. On May 22nd, 1998 the delegate wrote to Alnor's solicitor and addressed the claims of all three complainants. With respect to Chapman's claim, the delegate stated:

> "Thank you for your submission on Patrick Chapman. I did not have any time cards from June 11 - November/96 from you therefore I used the employee's records. Upon further discussion with Mr. Chapman and review of the records your calculation appears to be in order. The revised calculation is $3,020.80 (enclosed). You may forward a cheque, made payable to Mr. Chapman, to my attention at #210 - 4946 Canada Way, Burnaby, B.C. V5G 4J6."

I am advised by the delegate that "On June 1st, 1998, the Employer sent a cheque in that amount [*i.e.,* $3,028.80], which the Complainant accepted" (see Director's written submission to the Tribunal dated March 16th, 1999). Apparently, the claims of the other two complainants could not be resolved through negotiation and thus a determination was issued regarding the other two complainants.

The Determination that is now before me was issued on the basis that the delegate erred in calculating Chapman's entitlement; the source of the error, according to the delegate, was a failure to account for statutory holiday pay and vacation pay. Of course, as noted above, the employer takes the position that Chapman has been paid more than that to which he is entitled under the *Skills Development and Fair Wage Act* and the *Employment Standards Act.*

ANALYSIS

In my view, this appeal does not turn on the correctness of either the employer's or the delegate's calculations. I am of the opinion that the delegate did not have any authority to issue a Determination in this case because Chapman's unpaid wage claim had previously been settled.

Section 78 of the *Act* provides as follows:

> 78 (1) The director may do one or more of the following:
>
> (a) assist in settling a complaint or a matter investigated under section 76;
>
> (b) arrange that a person pay directly to an employee or other person any amount to be paid as a result of a settlement;
>
> (c) receive on behalf of an employee or other person any amount to be paid as a result of a settlement.
>
> (2) The director must pay money received under subsection (1)(c) to the person on whose behalf the money was received.
>
> (3) If a person fails to comply with the terms of a settlement, the settlement is void and the director may
>
> (a) determine the amount the person would have been required to pay under section 79 had the settlement not been made, and
>
> (b) require the person to pay that amount.

As can be seen, the Director (and via section 117 of the *Act*, her delegates) may negotiate a settlement on a complainant's behalf and receive and disburse the settlement funds. That is precisely what occurred in this case. While the Director may issue a determination for an amount greater than the settlement amount if the employer fails to comply with the settlement--see section 79(3)--in this case, the employer fully complied with the terms of settlement and forwarded the settlement funds which monies were, in turn, accepted by the complainant.

In *Small* (B.C.E.S.T. Decision No. 032/98) an employee who was represented by legal counsel entered into a settlement agreement with his employer but subsequently refused to be bound by the settlement agreement. As was noted by the Tribunal in enforcing the settlement reached in that case, both parties to a settlement agreement negotiated in good faith are entitled to assume the the other party will abide by the terms and conditions of the agreement. Unless specifically noted otherwise, the intent of all settlement agreements is to effect a final resolution of the matters in dispute between the parties.

Of course, under the law of contract, settlement agreements may be set aside if the agreement is void or voidable--say, by reason of misrepresentation, undue influence, duress or fraud. Section 78(3) of the *Act*, in effect, modifies the common law principle that one must sue to enforce a settlement agreement that has been dishonoured; under section 78(3), the settlement agreement is void and a determination may then be issued for whatever amount of unpaid wages the Director concludes is due and payable to the employee. However, in the present case, there is no suggestion that the settlement was anything other than a *bona fide* settlement agreement, not tainted in any way by fraud, misrepresentation or the like. Further, the employer complied with the settlement agreement and thus the agreement cannot be considered to be void by reason of section 78(3).

Two of the stated purposes of the *Act* are the encouragement of open communication between employers and employees and the provision of fair and efficient dispute resolution procedures [see sections 2(c) and (d)]. The settlement of unpaid wage claims is an integral aspect of the *Act*, explicated by the provisions giving the Director specific statutory authority to negotiate settlement agreements and receive and disburse settlement funds. In my view, the entire scheme of the *Act* is undermined if *bona fide* settlements can be overridden simply because one party--with the benefit of hindsight--subsequently concludes that they made a bad (or at least not an optimal) bargain. If *bona fide* settlement agreements can be reopened even in the absence of misrepresentation, fraud, undue influence, duress or noncompliance with the agreement, then one has to wonder why any party would want to settle any dispute. In my view, a principle that discourages, rather than encourages, the timely settlement of unpaid wage disputes ought to be very closely scrutinized. In the absence of any evidence before me showing that the settlement agreement in the present case was anything other than a *bona fide* agreement, neither void nor voidable, I am of the view that the settlement should stand. The Determination, therefore, must be cancelled.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be cancelled.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal