

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 -

Mitch Chambers
("the Employee")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 98/200

DATE OF DECISION: May 6, 1998

DECISION

OVERVIEW

This is an appeal by Mitch Chambers, under Section 112 of the *Employment Standards Act* (“the *Act*”), against a Determination which was issued by a delegate of the Director of Employment Standards on March 11, 1998.

The Director’s delegate determined that Mr. Chambers was not entitled to compensation for length of service under Section 63 of the *Act* because he was employed under the terms of a collective agreement between Mercury Metals Ltd. and Sheet Metal Workers Union, Local 280. As a result, the Director’s delegate concluded that Section 69 of the *Act* had the effect of replacing the provisions of Section 63 with the terms and conditions of the collective agreement under which Mr. Chambers was employed.

Mr. Chambers offers three reasons for his appeal:

- i. There was no shortage of work;
- ii. His former employer has discriminated against him because he suffered a workplace injury; and
- iii. He was given a layoff notice rather than notice that his employment was terminated.

In short, Mr. Chambers asserts that he lost his employment because he was injured and unable to work for a “couple of months”.

ANALYSIS

In my opinion, this is a case where an employee (Mr. Chambers) believes that he has been treated unfairly by his former employer (Mercury Metals Ltd.) but has sought a remedy in the wrong forum. My review of the reasons given by Mr. Chambers for his appeal lead me to conclude that any remedy which may be available to him would be available through the grievance procedures of the collective agreement between the Sheet Metal Workers Union, Local 280 and Mercury Metals Ltd.

Section 69(1) of the *Act* states:

If the provisions of a collective agreement relating to an individual termination of employment, including the layoff and right of recall provisions, when considered together, meet or exceed an employee's entitlement under section 63, those provisions replace section 63 for the employees covered by the collective agreement.

Section 63 of the *Act* establishes an employee's entitlement to compensation for length of service if he or she is dismissed without "just cause."

Mr. Chambers has not set out any reasons which would allow me to conclude that the Director's delegate erred when he determined that Section 69(1) of the *Act* operates such that Section 63 is inoperable in the facts of this case. As the appellant, Mr. Chambers has the onus of demonstrating that the Determination should be cancelled or varied. He has not met that onus.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

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