

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act

- by -

Arland Benjamin Marchant
("ABC")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: John McConchie

FILE N_{o.}: 96/233

DATE OF **D**ECISION: August 30, 1996

DECISION

OVERVIEW

This is an appeal by Arland Benjamin Marchant (“Marchant”) pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) against Determination Number CDET 001521 issued by the Director of the Employment Standards Branch (the “Director”) and dated March 11, 1996. The Determination found that the *Act* did not apply to Marchant, as he did not perform work for the Respondent company Maurer Construction Ltd. (“Maurer”) in British Columbia but had worked solely in Japan. Pursuant to Section 76 (2) of the *Act*, the Determination advised that no further action would be taken on Marchant’s complaint.

Marchant has appealed the Determination arguing that the Director erred in finding that the *Act* did not apply to his circumstances.

FACTS

This matter has been able to proceed on the basis of the materials on file without the need for an oral hearing.

The salient facts are very few. Maurer is a local company which secured a contract to do residential construction in Japan. It hired Mr. Marchant in British Columbia (along with other employees) and transported him to Japan to work as a carpenter on the contract. While in Japan, Mr. Marchant alleges that he was not paid in accordance with the requirements of the *Act*. Upon his return to British Columbia, he filed a complaint under the *Act*.

ISSUES TO BE DECIDED

The issues in this case are:

1. Does the British Columbia *Employment Standards Act* apply to Mr. Marchant’s work for the company in Japan?
2. If so, did the company breach the *Employment Standards Act*?
3. If so, what is Mr. Marchant’s entitlement under the *Act* ?

ANALYSIS

The threshold issue in this case is whether the *Act* applied to Marchant while he performed services for Maurer in Japan. In view of the increasing complexity of the law in this area, it is necessary to once again review the salient facts. The company is a local operation. Marchant is normally a resident of British Columbia. The contract of employment was made in British Columbia for employment to be carried out solely in Japan. Marchant did not perform any employment services for Maurer in British Columbia either before or after the conclusion of his services in Japan.

In these circumstances, it is my judgment that the *Act* did not apply to Marchant's employment in Japan. As a matter of statutory construction, there is a *presumption against the extra-territorial application of legislation*. The following passages from Driedger on the Construction of Statutes (Butterworths)1994 summarizes the law (at p. 343):

- (1) It is presumed that legislation is not intended to apply to persons, property or events outside the territory of the enacting jurisdiction. In the case of the provinces, this presumption is reinforced by constitutional limitations on the territorial application of provincial law.
- (2) The presumption does not limit the application of legislation to trans-border or multi-national facts where, in the view of the court or under the test applied by the court, the facts are adequately connected to the enacting jurisdiction.
- (3) The test used to determine the adequacy of connection between the enacting jurisdiction and the facts is an evolving one. The current approach emphasizes three factors: (i) the enacting jurisdiction must have a legitimate interest in the facts or its connection to the facts must be substantial and significant; (ii) the application of the legislation should not interfere inappropriately with the interests of other jurisdictions; and (iii) the application of the legislation should not be unfair to the parties.

The *Employment Standards Act* does not purport to extend to the circumstances presented in this case. Section 2 of the *Act* describes as one of the purposes of the *Act* "to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment." Section 119 speaks of the reciprocal enforcement of extraprovincial certificates. There is no provision in the *Act* which purports to extend its scope to employment contracts which are fully performed in a foreign jurisdiction.

When the legislature intends its laws to have effect outside British Columbia, it says so. One example is found in Section 8 of the *Workers Compensation Act*, which provides:

- 8.(1) Where the injury of a worker occurs while he is working elsewhere than in the Province which would entitle him or his dependents to compensation under this Part if it occurred in the Province, the board shall pay compensation under this Part if
- (a) a place of business of the employer is situate in the Province;
 - (b) the residence and usual place of employment of the worker are in the Province;
 - (c) the employment is such that the worker is required to work both in and out of the Province; and
 - (d) the employment of the worker out of the Province has immediately followed his employment by the same employer within the Province and has lasted less than 6 months, but not otherwise.

Another example is found in the *Employment Standards Act* of Ontario, which provides:

- 2(2) This Act applies to every contract of employment, oral or written, express or implied,
- (a) where the employment is for work or services to be performed in Ontario; or
 - (b) where the employment is for work or services to be performed both in and out of Ontario and the work or services out of Ontario are a continuation of the work or services in Ontario.

Neither statute purports to extend its jurisdiction to work done entirely outside the province. Therefore, even if the British Columbia legislation contained similar provisions, this would not assist the appellant in this case.

ORDER

Pursuant to Section 115, I order that Determination No. CDET 001521 be confirmed.

John McConchie
Adjudicator
Employment Standards Tribunal

JLM/jel