

An appeal

- by -

Glenn Molson a director of Prairie Manufactured Homes Inc.
("Molson")

- 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: Kenneth Wm. Thornicroft

FILE No.: 2002/155

DATE OF DECISION: June 6, 2002

DECISION

OVERVIEW

This is an appeal filed by Glen O. Molson (“Molson”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). Mr. Molson appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on January 15th, 2002 (the “Determination”) pursuant to which he was ordered to pay the sum of \$5,838.48 on account of, inter alia, unpaid wages owed to two former employees of a Saskatchewan company, Prairie Manufactured Homes Inc. According to the Determination, Molson was a director of this latter firm when the employees’ wage claims crystallized and his original liability was determined in accordance with Saskatchewan’s employment standards legislation.

This Determination was issued pursuant to the provisions of section 119(4) of the *Act* which authorizes the Director to enforce an unpaid wage order, judgment or certificate of a reciprocating jurisdiction. In this case, the original unpaid wage certificate was issued by the province of Saskatchewan’s Labour Standards Branch. Saskatchewan is a reciprocating jurisdiction as a result of Order-in-Council No. 70/95 which came into effect on January 19th, 1995.

Section 119 of the Act provides as follows:

Extraprovincial certificates

- 119 (1) If satisfied that reciprocal provisions will be made by another jurisdiction in or outside of Canada for enforcing determinations of the director, the Lieutenant Governor in Council may
- (a) declare that jurisdiction to be a reciprocating jurisdiction, and
 - (b) designate the designated statutory authority of that jurisdiction for the purpose of this section.
- (2) If a designated statutory authority obtains an order, judgment or payment-of- wages certificate, the authority may apply to the director to enforce that order, judgment or certificate.
- (3) The application must include a copy of the order, judgment or payment-of-wages certificate certified
- (a) by the court in which the order, judgment or certificate is registered, or
 - (b) by the designated statutory authority as a true copy, if there is no provision in the reciprocating jurisdiction for registering the order, judgment or certificate in a court.
- (4) If satisfied on receiving the application that the wages set out in the order, judgment or certificate are still owing, the director may make a determination requiring payment of those wages and may file the determination in a Supreme Court registry.

- (5) A determination filed under subsection (4) is enforceable by the director in the same manner and with the same priorities as are provided in this Act for wages owing.
- (6) Any person served under section 81 with a determination made under this section, may appeal the determination to the Supreme Court within
 - (a) 15 days after the date of service, if the person was served by registered mail, or
 - (b) 8 days after the date of service, if the person was personally served or served under section 122 (3).
- (7) The Rules of Court apply to an appeal under subsection (6) to the extent they are consistent with this section.
- (8) The Supreme Court has the same power that the tribunal has under section 113 to suspend the determination on application.
- (9) After hearing the appeal, the Supreme Court may confirm, vary or cancel the determination under appeal or refer the matter back to the director.

IS THIS APPEAL PROPERLY BEFORE THE TRIBUNAL?

The Issue

Although the Determination was issued on January 15th, 2002, this appeal was not filed with the Tribunal until March 26th, 2002. On its face, this appeal is not timely in light of the “deemed service” provision of the Act [see section 122(2)]. Accordingly, the appellant seeks an extension of the time for appealing under section 109(1)(b) of the Act. The Director’s delegate, her submission dated April 3rd, 2002 opposes an extension of the appeal period and, in any event, submits that the Tribunal does not have any jurisdiction to hear this appeal on its merits.

Analysis and Findings

Had this matter been properly before me, I might well have refused to extend the appeal period. However, having considered the matter, I entirely agree with the Director’s delegate that this appeal is not properly before the Tribunal and thus I need not address the application for an extension of the appeal period.

Section 119(5) gives the Director the authority to enforce a section 119(4) determination in the same manner as any determination issued by the Director in the ordinary course of events. However, simply because the Director has a right of access to all enforcement proceedings available under the Act [section 119(5)], it does not follow that a person liable under a section 119(4) determination has a right of access to the appeal provision (i.e., to the Tribunal) set out in the *Act* [section 112].

Section 119(6) is clear: A party liable under a determination issued under section 119(4) of the *Act* (as is the case here), may appeal that determination but such an appeal must be filed--and filed within the time limits set out in section 119(6)(a) or (b) depending on the method of service--with the Supreme Court of British Columbia pursuant to the Supreme Court Rules [section 119(7)]. The Employment Standards

Tribunal does not have the jurisdiction to adjudicate an appeal of a section 119(4) determination (see also *Ostrom*, BC EST # D047/97).

It follows that this appeal is not properly before the Tribunal and, accordingly, must be summarily dismissed. I pass no comment whatsoever as to the merits (or lack of same) regarding Mr. Molson's liability in this matter.

ORDER

Pursuant to section 114(1)(b) of the *Act*, I order that this appeal be dismissed because "the appeal is not within the Tribunal's jurisdiction".

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal