

An appeal

- by -

Alain Jeansonne
("Jeansonne")

- 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: David B. Stevenson

FILE No.: 2002/178

DATE OF DECISION: June 17, 2002

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Alain Jeansonne (“Jeansonne”) of a Determination that was issued on March 14, 2002 by a delegate of the Director of Employment Standards (the “Director”).

Jeansonne had filed a complaint with the Director under the *Act* alleging he was owed statutory holiday pay from his employer Avcorp Industries Inc. (“Avcorp”). The Determination concluded that, because Jeansonne was employed under a collective agreement, the *Act* did not apply, ceased the investigation of the complaint and closed the file.

The appeal takes issue with the conclusion that the *Act* did not apply to the complaint.

ISSUE

The issue in this appeal is whether Jeansonne has shown an error in the Determination sufficient to persuade the Tribunal to exercise its authority under Section 115 of the *Act* and return the matter to the Director for investigation and determination.

FACTS

Avcorp is an aerospace manufacturing company. Jeansonne worked for Avcorp from January 19, 1998 to October 27, 2001 as a woodworker/production assistant. Throughout this period he was employed under the terms of a collective agreement between Avcorp and the International Association of Machinists and Aerospace Workers, Lodge 250.

From June 25, 2001, Jeansonne was temporarily assigned to a charge hand position at a higher rate of pay. While he worked at the higher rate of pay during the first two weeks of July, he was paid for the July 1 statutory holiday at the lower rate of pay of his usual position. He claimed entitlement to be paid the July 1 statutory holiday at the higher rate of pay and filed a complaint with the Director. He also filed a grievance to that effect, which was abandoned by the Union during the grievance procedure. While it is not completely clear from the material on file, it does appear that Jeansonne filed a complaint to the Labour Relations Board about the decision of the Union to abandon the grievance and that complaint was rejected.

ARGUMENT AND ANALYSIS

Jeansonne argues that the statutory holiday provisions of the collective agreement are inferior to those of the *Act*. He says the Union was wrong not to pursue his grievance and that the *Act*, which contains minimum requirements, must be enforced by the Director. He also says the Director should have ordered the Labour Relations Board to order the Union to ensure compliance with the *Act*.

In reply, the Director says the relevant provisions of the *Act* are clear and dictate a conclusion that the claim made by Jeansonne must be adjudicated through the grievance procedure. The Director relies on Section 4 and Section 49 of the *Act* in making that argument.

I agree with the Director. Section 4 of the Act reads:

4. The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.

Section 49 of the Act says:

49. (1) If the statutory holiday provisions of a collective agreement, when considered together, meet or exceed the requirements of this Part, when considered together, those provisions replace the requirements of this Part for the employees covered by the collective agreement.
- (2) If the statutory holiday provisions of a collective agreement, when considered together, do not meet or exceed the requirements of this Part, when considered together
 - (a) the requirements of this Part are deemed to form part of the collective agreement and to replace those provisions, and
 - (b) the grievance provisions of the collective agreement apply for resolving any dispute about the application or interpretation of those requirements.

The Tribunal has decided that the effect of the above provisions is to give arbitrators exclusive jurisdiction to decide whether the provisions of a collective agreement meet or exceed the requirements of the *Act* (see *Director of Employment Standards (Rand Reinforcing Ltd. BC EST #RD612/01)*). The Director was, accordingly, correct in deciding that the *Act* did not apply to the complaint. There is no basis for this appeal. Whether the Union was wrong not to proceed with his grievance is a matter that falls within the jurisdiction of the Labour Relations Board acting under Section 12 of the *Labour Code* and neither the Director nor the Tribunal have any authority to direct the Board on that matter.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 14, 2002 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal