



An appeal

- by -

Edward P. Town
(“Town”)

- 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: M. Gwendolynne Taylor

FILE No.: 2003A/187

DATE OF DECISION: September 12, 2003



DECISION

This decision is based on written submissions presented by Edward P. Town (“Town”), L & C Forest Development (“Forest”) and the Director of Employment Standards (the “Director”).

OVERVIEW

This is an appeal by Town from a Determination of the Director dated May 21, 2003, concerning his complaint that he was owed vacation pay by his former employer, Forest. The Director’s delegate found that Forest had not contravened the Act and that Forest had paid all wages owing.

On June 20, 2003, Town appealed the Determination on the grounds that the Director failed to observe the principles of natural justice. Town also raised claims for wage arrears for October 2000 and for severance pay, neither of which he had claimed in his complaint to the Director.

ISSUE

1. Did the Director fail to observe the principles of natural justice?
2. Does Town have a valid claim for either of his additional issues?

FACTS AND ARGUMENT

This appeal turns largely on the legal issue of whether Town has met the statutory grounds for appeal. Therefore, I find it is not necessary to detail the facts, which are set out in the Determination. The Director’s delegate conducted an oral hearing on April 9, 2003. In the Determination, the delegate noted that Town raised an issue about statutory holiday pay at the beginning of the hearing, that there was a brief adjournment during which Town and Forest came to an agreement on that issue, and that the only issue before the delegate was whether Town was owed any vacation pay for the period of December 1, 1999 to June 16, 2001. The delegate concluded that Town was not owed outstanding vacation pay.

Town’s appeal is fact-based. Town disagreed with the delegate’s findings of fact and legal conclusion. He disagreed with the delegate’s acceptance of Forest’s records where they differed from Town’s records, and he reiterated his view that vacation pay was always a year behind and that cheques indicating ‘advances’ on holiday pay were misleading. Town presented his calculations to demonstrate that he was owed money for September and October 2000. He also provided a calculation for severance pay.

The Director replied to the appeal submitting that Town had not given any reasons to support his contention that the delegate failed to observe the principles of natural justice, and that the claims for October 2000 and severance pay had not been raised before the Director. The Director noted that the parties had been afforded an opportunity at the commencement of the hearing to add additional issues.

Forest replied to the appeal by responding to specific factual issues raised in Town’s appeal and disputing Town’s version of the facts.



ANALYSIS AND DECISION

Nature of the Appeal

The appeal is brought under section 112 of the *Act*:

112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:

- (a) The director erred in law;
- (b) The director failed to observe the principles of natural justice in making the determination;
- (c) Evidence has become available that was not available at the time the determination was being made.

An appeal to the tribunal is not a re-investigation of the complaint. It is a proceeding to decide whether there is any error in the Determination. Although Town alleges that the Director breached the principles of natural justice, I find that he has not given an example or otherwise elaborated on this ground of appeal. Natural justice is a legal term that encompasses the principles that parties are to be provided an opportunity to know the case against them and to meet that case. The Director's delegate conducted an oral hearing and from what I see in the Determination and in the submissions to the tribunal, Town was accorded his full opportunity to know the case, raise additional issues, present his evidence and challenge Forest's evidence. I see no indication that the delegated breached natural justice.

Town's appeal is solely based on his disagreement with the delegate's findings. However, that is not a valid basis for appeal to the tribunal. The tribunal will not substitute its opinion for that of the Director without some basis for doing so. His other grounds appear to be that he now wants to add claims. The tribunal's jurisdiction is to hear appeals, not to conduct new investigations.

The burden is on Town to demonstrate that there are grounds for dismissing or varying the determination. I find that he has not demonstrated any errors or grounds for interfering with the determination.

ORDER

Pursuant to section 115(1), I dismiss the appeal and confirm the Determination dated May 21, 2003.

M. Gwendolynne Taylor
Adjudicator
Employment Standards Tribunal