

An appeal

- by -

Ian Russell  
("Russell")

- 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:** Lorne D. Collingwood

**FILE No.:** 2001/85

**DATE OF DECISION:** May 30, 2001

## DECISION

### OVERVIEW

Ian Russell (whom I will refer to as “the appellant”, “the complainant” and also Russell) appealed a February 16, 2000 Determination by a delegate of the Director of Employment Standards (the “Director”). The appeal is pursuant to section 112 of the *Employment Standards Act* (“the Act”). In the Determination, the delegate decided that B.C. Furnace Service Ltd. (“BC Furnace” or “the employer”) did not owe Russell any wages.

In the Determination, the delegate said that Russell was owed vacation pay but his claim was extinguished through judgements issued in Provincial Court (Small Claims Division). I was assigned the appeal. In *Ian Russell*, BCEST No. D357/00, I referred matters back to the Director. I had this to say:

“I cannot tell from this particular Determination whether the employer has in fact paid Russell his wages. In part that is because the Determination fails to reach or, at least, state conclusions in regard to important matters such as the rate of pay, the amount of Russell’s guarantee and, if there was a draw, whether the agreement on pay does or does not provide that the shortfall in commissions in one month may be carried forward and applied against Russell’s subsequent earnings. I find also that the delegate fails to address evidence that the employer’s pay scheme is such that Russell ended up paying business costs.

Section 81(1) of the *Act* requires that delegates provide reasons for their Determinations.

**81** (1) On making a determination under this Act, the director must serve any person named in the determination with a copy of the determination that includes the following:

- (a) the reasons for the determination;
- (b) if an employer or other person is required by the determination to pay wages, compensation, interest, a penalty or another amount, the amount to be paid and how it was calculated; ... .

I find that this particular Determination does not meet the requirements of section 81 (1)(a) and (b). The latter because the Determination, in effect, orders that what Russell is owed in the way of vacation pay be applied against the judgements which are against him and there are no calculations. I also find that the Determination flies in the face of the facts as they have been presented to me.

It is not enough to say merely that records were studied and no amount is owed. That is to sidestep all of the major issues which are raised by the complaint. Delegates need not address each and every issue which is raised, no matter how minor or inconsequential, nor is there any requirement for long drawn out explanations, but all of the substantive issues must somehow be addressed in each and every determination.

The delegate finds that vacation pay is owed but does not state what amount of vacation pay is owed. That is of no assistance to the employee or the employer. And, the delegate goes on to express that the claim for vacation pay is extinguished by the judgements without ever explaining this new concept of extinguishment. It, moreover, strikes me that the delegate has in this case put the cart before the horse in that it seems to be that the judgements are something that the Director would only want to consider at the enforcement stage.”

My decision was issued in August of 2000. It called for an investigation of matters and a Determination which deals with what are the important issues that underlie the Complaint and states what it is that Russell is owed. The Director assigned those tasks to the very same delegate that issued the initial Determination. It was not until February of this year, that the delegate got around to responding to my decision but we now have his response, finally. It consists of a letter dated January 30, 2001. By that letter, the delegate orders BC Furnace to pay Russell a total of \$1,721.43 in wages.

The delegate’s letter was promptly sent to the parties by the Tribunal. Only the employer has had anything further to say. The employer indicates that it has some reservations about (commissions awarded for) two jobs but goes on to say “this matter has dragged on long enough. We are therefore prepared to accept the report as written, except to note that it does not address our two unsatisfied Judgements against Mr. Russell (copies enclosed). Kindly advise if these need to be considered at this stage of the Tribunal’s involvement.”

On my instructions, the settlement officer of the Tribunal was dispatched in the dispute in the hope that there might be some way to settling all of the issues which exist between employer and employee. He has advised me that he was unsuccessful.

Nothing further has been heard from the employer.

## **FACTS AND ANALYSIS**

Neither the employer, nor the employee have a complaint with what are now the findings of the delegate.

There is in fact nothing for me to decide at this point for it is clearly not for me to advise the employer on how it might collect on the two judgements gained through Provincial Court.

Moreover, as the parties are aware, the Director was asked to explain how a claim under the *Employment Standards Act* is extinguished by the judgements. The fact that he has not done so is telling. As I understand it, the delegate is not now suggesting that Russell's claim is extinguished by the judgements.

Given the above, there is nothing left to decide. What is required is that there be closure. And with that in mind, I am ordering that the Determination, as it has been amended, be confirmed and that interest be added pursuant to section 88 of the *Act*.

### **ORDER**

I order, pursuant to section 115 of the *Act*, that the Determination dated February 16, 2000, as amended by letter dated January 30, 2001, be confirmed. BC Furnace is ordered to pay Ian Russell \$1,721.43 and to that I add whatever interest has accrued pursuant to section 88 of the *Act*.

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**Lorne D. Collingwood**  
**Adjudicator**  
**Employment Standards Tribunal**