

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Minna Nysten
("Nysten")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 96/539

DATE OF DECISION: October 18, 1996

DECISION

OVERVIEW

This is an appeal by Minna Nysten (“Nysten”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination which was issued by a delegate of the Director of Employment Standards on September 12, 1996. The delegate found that Nysten’s complaint was not covered by the Act and, as a result, pursuant to Section 76 of the Act, he refused to investigate her complaint.

ISSUE TO BE DECIDED

The issue to be decided is whether the Determination should be varied or cancelled so that Nysten’s complaint would be investigated.

FACTS

Nysten was employed by Dinamac Holdings Ltd. (“Dinamac”) until July 10, 1996. In August, 1996 she filed a complaint with the Employment Standards Branch regarding termination of her employment. On her complaint form she indicated she was covered by a union contract.

On September 12, 1996, the Director’s delegate advised Nysten that her complaint would not be investigated because she was employed under the terms of a collective agreement between Dinamac and Local 602 and any dispute concerning termination of her employment had to be dealt with under the grievance procedure of the collective agreement and not under the Act. He further advised her that he understood she had commenced a grievance.

Nysten appealed this decision to the Tribunal on September 13, 1996. Nysten’s appeal does not allege that the Director erred in refusing to investigate her complaint. Rather, in her reasons for the appeal, Nysten stated that no grievance had been filed to the present date.

ANALYSIS

In my view, the Director’s delegate, in refusing to investigate Nysten’s complaint, merely complied with the Sections 69 and 76 of the Act.

Nysten was covered by a collective agreement. Section 69 of the Act states that where an individual is covered by a collective agreement and there is a dispute relating to that

individual's termination of employment, then the grievance procedures of the collective agreement apply for resolving the dispute.

There is no provision under the Act which would allow the Director to proceed with Nysten's complaint. The Act does not apply to this complaint and therefore the Director under Section 76 of the Act may refuse to investigate the complaint.

Accordingly, I conclude that the Director's delegate has not erred in his decision and this appeal must be dismissed.

ORDER

I order, pursuant to Section 115 of the Act, the the Determination dated September 12, 1996 be confirmed.

Norma Edelman
Registrar
Employment Standards Tribunal