

**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 -

Quentin Rickerby  
("Rickerby")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Lorne D. Collingwood

**FILE NO.:** 96/433

**DATE OF HEARING:** October 7, 1996

**DATE OF DECISION:** October 22, 1996

**DECISION**

**APPEARANCES**

Quentin Rickerby	On his own behalf
Andrew Westlund	President of Apex Communications
Keith Bradley	General Manager of Apex Communications

**OVERVIEW**

The appeal is by Quentin Rickerby ("Rickerby") pursuant to Section 112 of the *Employment Standards Act* ("the Act") against Determination # CDET 003133 of the Director of Employment Standards (the "Director"), a decision dated July 3, 1996. The Determination, issued as a result of a complaint by Rickerby, finds that Apex Communications Inc. ("Apex") had not contravened the Act in paying Rickerby less when he failed to meet a sales quota. Rickerby argues in that regard, that the Determination is in error. He also complains of the investigation by the Director's Delegate, alleging bias and that the officer did not address part of his complaint, that money was wrongly deducted from his pay for outstanding accounts.

**FACTS**

Quentin Rickerby was employed by Apex in commission sales from April 28, 1995 until May 2, 1996.

Apex changed its commission structure during the course of Rickerby's employment. One change led to Apex paying higher commissions for cellular telephone sales when an employee sold two or more monitored home security systems in a month. That sales quota was later reduced to one system.

In filing his complaint with the Employment Standards Branch, Rickerby complained that he was owed money as a result of his being paid less in months when he did not sell a monitored home security system and as a result of deductions of \$5.00 a week for every account that was outstanding after 30 days. In total his claim was for \$4,000.

The Determination awards Rickerby no moneys. The Determination is silent on the matter of deductions for outstanding accounts. In respect to his being paid less in months in which he did not sell a monitored home security system, the Director's Delegate found no contravention of the Act, that his pay was above the Act's dictated minimum and that the employer was at liberty to set commission rates beyond that.

The appeal claims bias. In that regard Rickerby complains that the investigating officer failed to contact him for his view of matters and that the officer failed to address one of his complaints, the deductions for outstanding accounts. In respect to the Determination he argues that he was unfairly penalised for not selling monitored home security systems as a result of changes to his pay and work, changes that he never agreed to.

On the basis of payroll records brought to the hearing it was revealed that in the months of February, March and April of 1996, \$45, \$40 and then \$66.30 would have been deducted from Rickerby's pay but for an agreement that his salary would not fall below certain levels in those months, as compensation for his agreeing to move to a new store. As the deductions would have taken him below the guarantee, they were not made. The evidence is that the Director's Delegate found these facts as she proceeded with her investigation and that she told Apex that the deductions would have been contrary to the *Act*, section 21 (2).

### **ISSUES TO BE DECIDED**

The matter of whether Rickerby is owed moneys as a result of deductions for outstanding accounts was resolved through the course of the hearing, when it was revealed that no such moneys were deducted.

Two issues remain. The first is the issue of bias. There is also the matter of Rickerby's pay in months in which he failed to sell a monitored home security system. Are wages owed Rickerby given the *Act*?

### **ANALYSIS**

The complaint of bias stems from an understanding on the part of Rickerby that he would be contacted for his view of matters, the officer's failure to deal with one of his complaints in the Determination and, in my view, a lack of understanding, on Rickerby's part, of the roles of an Employment Standards Officer. There are often four, that of investigator, an enforcement role, and those of decision-maker and mediator.

Adjudicator Stevenson dealt with what is expected of the Director's Delegate on receiving a complaint in *Lone Wolf Contracting and G. Marchand, D. Marchand et al* [1996] BCEST #D267/96. He remarked:

*"The role of the delegate is principally administrative and investigative, not judicial. The legislative purpose behind the structure of the Act is to provide an inexpensive and speedy resolution to complaints. In certain circumstances this overriding purpose will compel a delegate to reach certain conclusions and determinations without providing one of the parties with what they feel is 'adequate opportunity' to respond. In reality, what Lone Wolf (the employer) complains about is their perception that the delegate was predisposed to a certain result and did not appear to be responsive to their version of events.*

*Unfortunately, that is not an uncommon perception from persons not as conversant with the requirement of the Act as the investigating delegate. That does not justify a conclusion they were not given a reasonable opportunity to respond. ..."*

Rickerby is the complainant, not the respondent, but his objection to the officer's handling of matters is similar to that of Lone Wolf. And like Lone Wolf, Rickerby fails to appreciate the officer's role as investigator and what that entails, given the need for cost effectiveness and to act expeditiously, all the while keeping the *Act* in mind. Section 77 of the *Act* requires that an employer be given a chance to respond to the complaint but the sort of exchange envisaged by Rickerby is not required, or wise I think, except where it is necessary for a thorough investigation. It was not in Rickerby's case. The complaint was clear, there was simply a need to find the facts of the case and like so many employment standards cases, success in terms of finding those facts, depended not on hearing from the parties but on the instincts and experience of the officer and the officer's skill in the ferreting out information.

The officer need not have contacted Rickerby and there was no failure to investigate, that is the evidence. Yes, the Determination is silent on a matter of importance to Rickerby. That is an error, the officer should have reported her findings in respect to Rickerby's complaint that deductions were made for outstanding accounts. But I see only a failure to report findings. The complaint was investigated, that is clear. The officer pursued Rickerby's complaint to the point of finding, as I have, that no moneys were actually deducted from Rickerby's pay as a result of the late payment of accounts. Apex was also warned that deductions for outstanding accounts are not allowed by the *Act*. There was no failure to investigate at all, that is the evidence, and there is no evidence of bias, that the officer was in any way predisposed to a particular outcome.

Turning to the matter of the deductions that are alleged to have been made in months in which a monitored home security system was not sold, the Director's Delegate found that Apex paid a higher commission in months when a sales quota was met, than when it was not. That was not found to be contrary to the *Act*. I agree and find as well that the *Act* does not prevent Apex from changing its commission structure as it did, without the consent of Rickerby. Commissions were above the dictated minimum of the *Act* and aside from violating section 21 (2), Apex has not been shown to have acted in a way that is contrary to the *Act*.

I agree with the Determination, no moneys are owed Rickerby. The Determination is therefore confirmed.

**ORDER**

I order, pursuant to Section 115 of the *Act*, that Determination # CDET 003133 be confirmed.

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

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