

An appeal

- by -

Tyrone Spears
("Spears" or "employee")

- 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: Paul E. Love

FILE No.: 2001/265

DATE OF DECISION: June 14, 2001

DECISION

OVERVIEW

This is an appeal by an employee, Tyrone Spears, from a Determination dated March 15, 2001 issued by a Delegate of the Director of Employment Standards. The Delegate found that Mr. Spears was paid fully for his work with Aspen Planners Ltd., and had not worked the requisite three months in order to become entitled to compensation for length of service. Mr. Spears appeal contained cryptic notes on the appeal form, but did not identify any errors in fact or law. I dismissed the appeal as a frivolous appeal as it did not raise any justiciable issue and was devoid entirely of merit.

FACTS

Tyrone Spears (the “employee”) alleged that he worked for Aspen Planners Ltd. (the “employer”) was terminated because of lack of work on July 28, 2000. He alleges that he did not receive notice or compensation for length of service. He also alleged that he did not receive regular wages, statutory holiday pay, and that the employer deducted union dues, wrongfully. This work place is certified by the International Union of Wood and Allied Workers Union (“IWA”). This appeal was decided by way of written submissions from the employer, employee and Delegate of the Director of Employment Standards.

A Delegate of the Director of Employment Standards (“Delegate”) conducted an investigation of Mr. Spears’ complaint under the *Employment Standards Act, R.S.B.C. 1996, c. 113* (“Act”). After an investigation, the Delegate issued a Determination on March 15, 2001. The Delegate determined that Mr. Spears had worked on a casual basis for a number of years, and did not work at all in 1999, and worked for the periods June 15 to June 29, 2000 and July 17 to July 28, 2000 as a saw filer and a saw fitter. The Delegate determined that Mr. Spears was not a member of the IWA, and that the union had no record of him working at the employer.

The Delegate relied on the information provided by the employer. The Delegate determined, on the basis of payroll records, that Mr. Spears had been fully paid for his work, and had not worked a three month period, and was not therefore entitled to compensation for length of service.

Mr. Spears signed an appeal form. There are some cryptic notes on the appeal form, none of which are of any assistance to me or raise any issues related to the appeal. The appellant refers to a “WCB injury on March 2, 2001”, and suggests that the Tribunal “send for further investigation regarding WCB case history” (sic).

ISSUE:

Did the Delegate err in determining that Mr. Spears was not entitled to regular wages, statutory holiday pay, and that the employer deducted union dues, wrongfully.

ANALYSIS

In an appeal under the *Act*, the burden rests with the appellant, in this case the employee, to show that there was an error in the Determination such that I should vary or cancel the Determination. The appellant has raised no issue, either with regard to the facts in the Determination, or the applicable law. This falls into the category of a frivolous appeal, as no justiciable issue has been raised by the appellant, and the matter is devoid, entirely, of merit: *Rein, BCEST #D561/97 (Collingwood)*.

ORDER

Pursuant to s. 115 of the *Act* I order that the Determination dated March 15, 2001 is confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal