

EMPLOYMENT STANDARDS TRIBUNAL
In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C. 113

- by -

Karen Culley
Kelly Deschambault-Wills
Lyn Savage
("the Appellants")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NOS.: 97/400, 97/401 & 97/402

DATE OF DECISION: July 18, 1997

DECISION

This is an appeal by Karen Culley, Kelly Deschambault-Wills and Lyn Savage (“the Appellants”), under Section 112 of the *Employment Standards Act* (the “Act”), against Determinations issued by a delegate of the Director of Employment Standards (the “Director”) on April 28, 1997. The delegate found that no wages were owed to the Appellants by Valco Discount Club Inc. (“Valco”). The Appellants argue that they are owed wages by Valco.

FACTS

On March 17, 1997 the Employment Standards Branch in Abbotsford (the “Branch”) received complaints from the Appellants alleging they were owed wages by Valco.

On April 28, 1997 a delegate of the Director of Employment Standards sent Determinations to the Appellants which read as follows:

I have now completed my investigation of your Employment Standards Act complaint against Valco Discount Club Inc.

Allegations

In your complaint you alleged that wages were owing to you.

I have completed my investigation into these allegations. These are my findings:

Although payroll records were not available to examine, the information you provided was disputed by several witnesses and described as improbable.

Your complaint will now be closed on our file.

On May 15, 1997 the Appellants filed appeals against the Determinations.

In their reasons for the appeals, the Appellants state that they have records and witnesses to support their claims that they are owed wages by Valco and they challenge the credibility of the “witnesses” referred to in the Determinations. They enclosed several pages of records and letters of support, which had been sent to the delegate when they filed their complaints, along with new letters of support. Two of the Appellants (Culley and Savage) also said that the delegate told them that proper payroll records were not made available by Valco and therefore he could not make a judgment in the areas of hours of work, regular wages, overtime and vacation pay. The other Appellant (Deschambault-Wills) said that the delegate told her that payroll records were not

available from Valco and that he would not make a decision in her favour because "...he did not see the need to go through inches of paperwork, and that it did not matter which way he rules, either the business or [she] would appeal so he ruled against the employees of Valco."

On May 21, 1997 the Tribunal sent a letter to Valco and the delegate advising them of the appeals. The delegate was asked to provide any additional documents relevant to the appeal. He forwarded to the Tribunal copies of the complaint forms for two of the Appellants; an undated letter from Valco to the Branch regarding Culley; a March 21, 1997 letter from Valco to the Branch which states that it has retained legal counsel and it is false that the Appellants did not receive any payments and it has cancelled cheques to prove it; a letter dated April 9, 1997 to Valco's counsel from the delegate advising of the three complaints; a Demand for Employer Records dated April 17, 1997 (which, it should be noted, was incorrectly issued under the old Act, and not under the new Act which came into force on November 1, 1995); and a letter dated April 23, 1997 from Valco to the delegate stating it cannot deliver any records as they were removed without permission from their files by persons unknown. The delegate made no reply to the Appellant's reasons for their appeals.

ANALYSIS

Under Section 1 of the *Act*, a Determination is defined as any decision made by the Director of Employment Standards under various sections of the *Act*, including a decision made pursuant to Section 79. Section 79 of the *Act* provides that the Director of Employment Standards, on completing an investigation, may make a Determination under this section and, if satisfied that the *Act* has not been contravened, must dismiss the complaint or, if satisfied that a person has contravened the *Act*, she may require the person to comply, remedy or cease doing an act and she may impose a penalty.

Once the Director of Employment Standards makes a Determination she must, pursuant to Section 81(1)(a) of the *Act*, serve any person named in the Determination with a copy of it, including the reasons for the Determination. This section of the *Act* mandates that a Determination must contain reasons for the decision. That is, a Determination should explain how and why the Director of Employment Standards or her delegate reached a particular conclusion, both on fact and on law or policy.

In this case, I am not satisfied that the delegate (on behalf of the Director of Employment Standards) has provided adequate reasons for the decision to reject the claims of the Appellants.

In the Determinations, the delegate states that he has completed his investigation and his "findings" are as follows: "Although payroll records were not available to examine, the information you provided was disputed by several witnesses and described as improbable." It is not clear whether the delegate means that no employer records exist or that records do exist but were unavailable for examination. In any event, he provides no

explanation for either scenario. Furthermore, the delegate has provided no indication of what “information” was provided by the Appellants or why it is considered to be “improbable”, and he has provided no information as to who the “witnesses” are and what they said. The Determinations lack particulars and, in my view, are void of adequate reasons. On the whole, there is no satisfactory explanation for dismissing the claims of the Appellants.

To ensure that the principles of natural justice are met, a person named in a Determination is entitled to know the decision resulting from an investigation and the basis for that decision. Without sufficient reasons, a person cannot assess the decision, which includes knowing the case to be met if there is an appeal and determining whether there are grounds for an appeal. Insofar as these Determinations lack sufficient reasons, they offend the principles of natural justice and are contrary to Section 81(1)(a) of the *Act*. Furthermore, in the absence of essential information in the Determinations, it is not possible to conclude that the Determinations were arrived at after a full and fair consideration of all the evidence and that a complete investigation was done by the delegate. Rather, the opposite is suggested, and I am strengthened in this view by the Appellant’s statements about the delegate in their reasons for the appeals and the lack of reply by the delegate.

One of the purposes of the *Act* is to provide for fair and efficient dispute resolution procedures (Section 2). In order to ensure that this purpose is fulfilled, I have decided to refer these Determinations back to the Director of Employment Standards for further investigation, and if necessary, the issuance of varied Determinations, with directions concerning a deadline for completion.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determinations issued on April 28, 1997 be referred back to the Director of Employment Standards for further investigation and, if necessary, the issuance of varied Determinations. I further order, pursuant to Section 107 of the *Act*, that the investigation and issuance of any Determinations should be completed no later than August 29, 1997.

Norma Edelman
Registrar
Employment Standards Tribunal