

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 -

Robert A. Palmer
("Palmer")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Norma Edelman

FILE NO.: 97/533

DATE OF DECISION: July 28, 1997

DECISION

OVERVIEW

This is an appeal by Robert Palmer (“Palmer”) under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination which was issued on June 24, 1997 by a delegate of the Director of Employment Standards (the “Director”). The Determination found that no wages were owed to Palmer by Mountain Properties Ltd. Palmer appealed the Determination on July 12, 1997.

ISSUE TO BE DECIDED

The issue to be decided is whether the Determination meets the requirements of the *Act*.

ANALYSIS

The Determination against which this appeal has been made is reproduced below:

Dear Mr. Palmer:

Re: Complaint made under the *Employment Standards Act*

I have now completed my investigation of your *Employment Standards Act* complaint against Mountain Properties Ltd.

Allegations

In your complaint you alleged you were owed for regular wages, overtime, deductions from wages, and termination pay.

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

A replacement cheque in the amount of \$25.40 has been given to you for the one requiring a date change. The employer’s payroll records indicate nothing further owing to you for overtime and deductions.

In the matter of your claim for severance pay, the employer has shown just cause for your dismissal. Pursuant to section 63(3)(c) of the *Employment Standards Act*, the employer’s liability to pay compensation for length of service is therefore discharged.

Your complaint will now be closed on our file.

Section 81(1)(a) of the *Act* reads as follows:

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.

Section 81(1)(a) of the *Act* mandates that a Determination must include 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 Director's delegate has provided reasons for the decision to reject the claim of Palmer.

The Determination contains findings that the employer is not liable for compensation for length of service because it had just cause for Palmer's dismissal and, the employer's records indicate nothing is owed to Palmer for overtime and deductions. A further, somewhat incomprehensible, finding is that: "A replacement cheque in the amount of \$25.40 has been given to you for the one requiring a date change". The Director's delegate provides no reasons for these findings. There is no satisfactory explanation for rejecting the claim of Palmer. For example, there is no indication that any of Palmer's evidence was considered, nor is there any explanation as to why Palmer was dismissed and how the circumstances concerning his dismissal constituted just cause pursuant to the *Act*.

One of the purposes of the *Act*, as set out in Section 2, is to "...*promote the fair treatment of employees and employers...*" Another purpose is to "...*provide fair and efficient procedures for resolving disputes...*" In my view, neither of these purposes can be achieved in the absence of a clear set of reasons for a decision that either an employee is owed wages or is not owed wages by an employer. In addition, 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 made against them or the case to be met if there is an appeal, and determining whether there are grounds for an appeal.

The Determination under appeal is fundamentally flawed. Insofar as it lacks reasons, it does not meet the requirements of Section 81(1)(a) of the *Act*. It also offends the principles of natural justice and is contrary to the intent of the *Act*.

For the above reasons, I consider this Determination to be null and void.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated June 24, 1997 be cancelled.

Norma Edelman
Registrar
Employment Standards Tribunal