

An appeal

- by -

Richard M. Fraser
(‘Fraser’)

- 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: David B. Stevenson

FILE No.: 2001/259

DATE OF DECISION: June 21, 2001

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) brought by Richard M. Fraser (“Fraser”) of a Determination that was issued on March 5, 2001 by a delegate of the Director of Employment Standards (the “Director”).

Fraser had filed a complaint with the Director alleging his employer, the City of Surrey (“Surrey”), had contravened Section 63 of the *Act*. In his complaint, Fraser claimed entitlement to lost wages and to length of service compensation. The Determination concluded the claim for lost wages was not supported by any provision in the *Act*. The Determination also concluded that since the issue of Fraser’s termination was proceeding through the grievance arbitration procedure in the collective agreement between Surrey and the Canadian Union of Public Employees, Local 402 (“CUPE”), the Director would exercise the discretion allowed in Section 76(2)(e) of the *Act*, would stop investigating the complaint and would take no further action on it.

The reasons for the appeal are stated as follows:

Your office has the right to make a decision, regardless of other bodies involved.
You also have the right to the Employment Standards files on this issue. Use it.

ISSUE

The sole issue in this case is whether, in the circumstances, the Director properly exercised her discretion under Section 76 of the *Act*.

FACTS

The Determination reveals that Fraser was dismissed from his employment with Surrey in December, 1999. At the time of his dismissal, Fraser was working under the terms of a collective agreement between Surrey and CUPE and was a member of CUPE. Upon dismissal, Fraser filed a complaint with CUPE, alleging wrongful dismissal, and CUPE filed a grievance on his behalf. At the time of the Determination, the dispute was proceeding through the grievance procedure.

ARGUMENT AND ANALYSIS

The Determination relied on the provisions of Section 76(2)(e) of the *Act*, which state:

76. (2) *The director may refuse to investigate a complaint or may stop or postpone investigating a complaint if*

...

- (e) *a proceeding relating to the subject matter of the complaint has been commenced before a court, tribunal, arbitrator or mediator,*

There was no error in the conclusion that Fraser's claim for lost wages was not supported by any provision in the *Act*. The Determination correctly noted that claim was beyond the scope of the *Act* in the circumstances of Fraser's dismissal.

Nor can I find any error in the decision of the Director to stop investigating the complaint. Not only was the matter of his dismissal being processed through an alternate dispute resolution process, but that decision was consistent with the intention of the *Act*, expressed in Section 69, that claims under Section 63 by persons employed under a collective agreement should be addressed through the grievance procedure in the collective agreement and be decided by an arbitrator (see *Re Rand Reinforcing Ltd.*, BC EST #D123/01).

While technically it does not raise any ground for appeal, Fraser appears to take issue with the fact that the Director contacted CUPE in the course of investigating the complaint and provided CUPE with a copy of the Determination.. There was nothing inappropriate about that course of conduct. I accept completely the Director's reply to that matter of concern:

It was a necessary part of my investigation to ascertain whether Fraser was represented by the Union in this matter and whether a grievance was proceeding along the path set out in the collective agreement. . . .

As for providing CUPE with a copy of the Determination, they are entitled to know that the Director views arbitration as the proper forum for the claims raised by Fraser. Finally, I also agree with the reply of the Director that whether Fraser was dealing with the Labour Relations Board in respect of the matter in dispute under the collective agreement was irrelevant to the conclusion reached in the Determination and was referred to in the Determination as a matter of fact, provided by Fraser, and as part of the background to the complaint.

The appeal is dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination dated March 5, 2001 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal