

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-

Olga Drefko
("Drefko")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR:	Kenneth Wm. Thornicroft
FILE No.:	1999/345
DATE OF DECISION:	August 13th, 1999

DECISION

OVERVIEW

This is an appeal brought by Olga Drefko (“Drefko”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on May 11th, 1999 under file number ER81090 (the “Determination”). The Director’s delegate “declined to reopen” an unpaid wage complaint that Drefko had filed against her former employer, Money Saver Advertiser Publishing Ltd. (“Money Saver”).

FACTS

Drefko’s original complaint was filed with the Employment Standards Branch on November 14th, 1996. In her complaint Drefko alleged that she worked as an accountant/business manager with Money Saver from September 5th until October 11th, 1996 and was owed regular wages, overtime and vacation pay. During the period from mid-April 1997 until February 1999, Drefko had no contact with the Employment Standards Branch.

On July 15th, 1997 Drefko filed essentially the identical claim in the Small Claims Division of the B.C. Provincial Court. A settlement conference relating to this Small Claims action was held on February 5th, 1998 at which time the claim was noted to be “adjourned generally”. It appears that Money Saver vigorously disputed the *bona fides* of Drefko’s claim; Money Savers apparently claimed that whatever services Drefko might have provided to it were in exchange for its principal having made available to Drefko a “rent free” basement suite. Drefko’s Employment Standards file was closed when the Employment Standards Branch was advised about the pending Small Claims action.

By way of the Determination, the delegate refused to “reopen” the complaint because:

- “a proceeding relating to the subject matter of the complaint has been commenced before a court” [see section 76(2)(e) of the *Act*];
- Drefko appeared to have abandoned her complaint sometime after mid-April 1997; and
- Money Saver has now “ceased to exist” and the Branch has been unable to recover any unpaid wages for any former employee of that firm.

ISSUE TO BE DECIDED

Did the delegate properly refuse to “reopen” Drefko’ unpaid wage complaint?

ANALYSIS

It should be noted that Drefko was represented by legal counsel when she filed her Small Claims action; her counsel was well aware of the fact that she had previously filed a complaint relating to the same claim with the Employment Standards Branch. Indeed, according to Drefko’s appeal documents, her legal counsel made several attempts to contact the delegate assigned to the file prior to initiating legal proceedings in the provincial court on her behalf.

It should also be noted that during the period from December 1997 to October 1998, Drefko was involved in proceedings relating to her employment under the federal *Employment Insurance Act* which ultimately appear to have been resolved in her favour.

In February 1998, the Small Claims action was only adjourned and Drefko could have brought (and perhaps still can bring) on that action for formal hearing and adjudication. In her appeal documents, Drefko only asserts that “my lawyer did not encourage any other proceedings” after the settlement conference was concluded. One has to wonder why her counsel would not have advised her to proceed had he felt she had a meritorious claim. On the other hand, if her claim is meritorious perhaps she should enquire of her former legal counsel as to why her Small Claims action has languished for the past one and one-half years.

However, and in any event, given the effluxion of time and the provisions of sections 2(2) and 76(2)(e) of the *Act*, I am of the view that the delegate did not improperly exercise her discretion when she refused to “reopen” Drefko’s complaint.

Further, and in any event, I fail to see how expending scarce resources investigating a defunct former employer that is devoid of assets (and hence without ability to pay any determination that might be issued against it) furthers anyone’s interests.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal