

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the

Employment Standards Act

-by-

Robert Crawford Harris

(“Harris”)

-of a Determination issued by-

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 96/616

DATE OF DECISION: December 22nd, 1996

DECISION

OVERVIEW

This is an appeal brought by Robert Crawford Harris (“Harris”) pursuant to section 112 of the Employment Standards Act (the “Act”) from Determination No. CDET 004168 issued by the Director of Employment Standards (the “Director”) on October 2nd, 1996. The Director determined that Harris’ complaint did not fall within the purview of the Act and, accordingly, dismissed the complaint pursuant to section 76(2)(b) of the Act.

FACTS

Harris is employed as a teacher with the Surrey School District (No. 36) (the “employer”) and has been so employed since 1980. The essence of Harris’ complaint is set out in a letter dated August 29th, 1996 addressed to the Director, Employment Standards Branch in Vancouver (attached to this letter was some 150 pages of supporting documentation). In this letter Harris asserts that:

“For the past two years, I have been seeking redress for the harm I suffered as a result of perceived acts and/or omissions of [certain named Surrey School District administrative officers], who were, in turn, apparently aided and abetted by a number of teachers at [a named school].”

In his August 29th letter, Harris enumerates various allegations which, in sum, amount to a contention that he has been the victim of a concerted conspiracy to remove him from a particular teaching position, and indeed, the teaching profession. Apparently, Harris has taken his allegations to the Surrey School Board, the Surrey Teachers’ Association (his union) and to the British Columbia Teachers’ Federation. None of these organizations has given Harris the redress he seeks.

So far as I can gather from Harris’ August 29th letter, his claim is in the nature of a tort action for defamation and negligence--indeed, Harris asserts that “I intend to file charges of a criminal and/or civil nature against those people who mistreated me and against those organizations which continue to employ these individuals”.

In his August 29th letter, Harris does not allege that the employer has violated any particular provision of the *Employment Standards Act* (indeed, the only statutory reference in his letter is to the *Labour Relations Code*). In his appeal form Harris states: “The Surrey School Board repeatedly violated section 8 of the Employment Standards Act”.

ISSUE TO BE DECIDED

The Director did not make any determination with respect to the merits of Harris’ complaint. The Determination dealt solely with the jurisdictional issue. Similarly, in this appeal, the merits of the dispute are irrelevant. Only after the complaint has been held to fall under the Act, will it be appropriate to explore the merits of the complaint. Thus, the simple issue before me is as follows: “Does Harris’ complaint fall within the jurisdiction of the Act?”.

ANALYSIS

Since Harris alleges that his complaint falls under section 8 of the Act, it is to that matter I now turn. Section 8 of the Act provides as follows:

8. An employer must not induce, influence or persuade a person to become an employee, or to work or to be available for work, by misrepresenting

- (a) the availability of a position,
- (b) the type of work,
- (c) the wages, or
- (d) the conditions of employment.

Having reviewed the entire file in this matter, I am not satisfied that Harris’ allegations of misconduct on the part of various employees of the Surrey School District properly fall within section 8 of the Act. Harris’ complaint, taken at face value, does not relate to pre-hire misrepresentations as required by section 8. Harris’ complaint relates to certain alleged breaches of what he says are terms and

conditions of employment (i.e., a breach of contract claim)--as such, these allegations lie outside the ambit of section 8 which, as I indicated above, deals with pre-contractual misrepresentations (see *Queen v. Cognos Inc.* (1993) 99 D.L.R. 4th 626 (S.C.C.)). I might parenthetically add that I have perused the entire file (no small task as the file includes several hundred pages) and I cannot see any allegation that would, *prima facie*, trigger a complaint under any other provision of the Act.

However, even if it could be said that Harris' complaint does fall within section 8 of the Act, the complaint is nevertheless statute-barred (and has been for some time) by reason of section 74(4) of the Act. This latter subsection provides for a six-month limitation period running from the "date of the contravention". It should be recalled that in Harris' original complaint letter of August 29th, he asserts that he has been attempting to obtain some sort of redress for the "past two years".

In my view, the proper forum for this complaint is either the civil courts or, more likely, the grievance arbitration process under the collective bargaining agreement that governs Harris' employment with the school board [see *Weber v. Ontario Hydro* (1995) 125 D.L.R. 4th 583 (S.C.C.)].

In this latter regard, it would appear that Harris has lodged some sort of complaint with his collective bargaining agent and that the latter has chosen not to proceed with the matter. If Harris is of the view that he has a *bona fide* grievance that has not been dealt with in good faith by his union, then his avenue of redress lies in a section 12 application under the *Labour Relations Code*, rather than in a complaint under section 8, or any other provision, of the *Employment Standards Act*.

To summarize, I entirely agree with the Director that Harris' complaint falls outside the jurisdiction of the Employment Standards Act.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 004168 be confirmed.

Kenneth Wm. Thornicroft, Adjudicator

Employment Standards Tribunal