

**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 -

Anthony Mise  
("Mise")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 98/415

**DATE OF HEARING:** August 26, 1998

**DATE OF DECISION:** September 21, 1998



- The delegate of the Director forwarded a cheque to Mise along with a letter dated September 25, 1996 requesting Mise to sign the enclosed release form and return that form to the delegate;
- Mise cashed the cheque but refused to sign the accompanying release form;
- Mise commenced court action against Pacific however this action was suspended due to Pacific being placed in receivership;
- Mise next contacted the delegate of the Director in April 1998, 1 1/2 years after receiving and cashing the cheque from Pacific, to request that his complaint be reopened;
- the delegate reviewed the request by Mise and concluded that the matter had been resolved, therefore pursuant to Section 76 (2) (g) issued the Determination dated June 5, 1998.

The delegate of the Director submits that the meeting in mid-September 1996 resulted in a settlement of the complaint filed by Mise.

The letter from the delegate of the Director to Mise dated September 25, 1996 which accompanied the cheque stated in part:

*“Please find enclosed a cheque payable to you from the above company. This now finalizes the Employment Standard Branch’s involvement with your complaint and the file is now closed. Could you please sign the enclosed Release form and fax it to my attention..... ”* (emphasis added)

Mise contends that he refused to sign the enclosed release form because he did not agree that the matter had been settled and that such refusal clearly indicates that the matter had not been settled. Mise further contends that he only agreed to accept the cheque as he was advised by the delegate of the Director that the *Employment Standards Branch* could not pursue wages for work performed by him at home and he would be able to use this money to pursue the matter further in the courts. Mise concedes that he did cash the cheque shortly after it was received.

Mise did not have any contact with the delegate of the Director for approximately 1 1/2 years until, April 1998, when he requested that his file be reopened. Mise states that the only reason for contacting the delegate of the Director at this time was that as his court action had been suspended due to the appointment of a receiver, he felt that the Director was the only avenue left to pursue his former employer.

Randy Isaac (“Isaac”) representing Pacific gave evidence that the employer considered the complaint filed by Mise to have been settled upon the agreement to make a payment to Mise in the net amount of \$6,784.24. Pacific issued the cheque and provided it to the delegate of the Director who forwarded the cheque to Mise in Prince Rupert. When Pacific received confirmation that the cheque had been cashed, they felt the matter was closed.

## ANALYSIS

The burden of establishing that the delegate of the Director erred in the Determination rests with the appellant, in this case, Mise.

The issue which is before me is the narrow issue of whether the delegate of the Director erred in concluding that the dispute between Mise and Pacific, which had been the subject of a complaint by Mise in 1996, had been in fact resolved.

The authority of the delegate of the Director to participate in assisting with settlements between the parties in a dispute is set forth in Section 78 of the *Act* which provides:

### *Section 78, Settlements*

78. (1) *The director may do one or more of the following:*

- (a) assist in settling a complaint or a matter investigated under section 76;*
- (b) arrange that a person pay directly to an employee or other person any amount to be paid as a result of a settlement;*
- (c) receive on behalf of an employee or other person any amount to be paid as a result of a settlement.*

*(2) The director must pay money received under subsection (1) (c) to the person on whose behalf the money was received.*

*(3) If a person fails to comply with the terms of a settlement, the settlement is void and the director may*

- (a) determine the amount the person would have been required to pay under section 79 had the settlement not been made, and*
- (b) require the person to pay that amount.*

With respect to the issue of pursuing claims for wages earned while working at home, Section 1 of the *Act* defines 'work' as:

*" 'work' means the labour or services an employee performs for an employer **whether in the employee's residence or elsewhere.**"*

(emphasis added)

Section 1 of the *Act* also defines wages as:

*"wages includes*

*(a) salaries, commissions or money, paid or payable by an employer to an employee for work,....."* (emphasis added)

Mise did not provide any substantive evidence that he was advised by the delegate that the *Employment Standards Branch* could not pursue his claim for wages for work performed at his home. The definition of 'work' contained in Section 1 of the *Act* clearly provides for work at home to be considered as 'work' for which wages must be paid.

I am of the view that the request by Mise in April 1998 to have the delegate of the Director reopen his file further indicates that Mise believed that the delegate of the Director did have the ability under the *Act* to pursue wages for work performed at home, else why would he request the reopening.

I am of the view that the refusal of Mise to sign the release form as requested by the delegate of the Director is not determinative of the status of the complaint as Mise clearly was made aware in the letter from the delegate of the Director that his complaint was now finalized and his file was closed.

The Director has the authority to refuse to investigate a complaint pursuant to Section 76 (2) of the *Act* which provides:

*"Section 76, Investigation after or without a complaint*

*.....*

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

*(a) the complaint is not made within the time limit in section 74 (3) or (4),*

*(b) this Act does not apply to the complaint,*

*(c) the complaint is frivolous, vexatious or trivial or is not made in good faith,*

*(d) there is not enough evidence to prove the complaint,*

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

*(f) a court, tribunal or arbitrator has made a decision or award relating to the subject matter of the complaint, or*

*(g) the dispute that caused the complaint is resolved."*

The facts in the matter before me are clear:

- Mise accepted a cheque from Pacific which was intended as a settlement;

- The cheque was enclosed in a letter from the delegate of the Director which stated in part “*This now finalizes the Employment Standards Branch’s involvement with your complaint and the file is now closed*”;
- Mise did not contact the delegate to dispute the closing of his file;
- Mise cashed the cheque;
- Mise did not contact the delegate for more than 1 1/2 years and, only then because his court action had been suspended.

For all of the above reasons and based on the balance of the probabilities I conclude that the dispute between the parties had been resolved and, I further conclude that the delegate of the Director did not err in issuing the Determination dated June 5, 1998.

The appeal by Mise is therefore dismissed.

### **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated February 4, 1998 be confirmed in all respects.

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**Hans Suhr**  
**Adjudicator**  
**Employment Standards Tribunal**