

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 -

Larry Travis

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: April D. Katz

FILE No.: 2000/479

DATE OF DECISION: September 25, 2000

DECISION

OVERVIEW

The Employee, Larry Travis, is appealing Determination ER #:074-398 in which the Director's Delegate found that the dispute had been resolved and therefore did not investigate the complaint. Larry Travis had filed a complaint on March 27, 2000 against Cornerstone Properties Ltd. ("Cornerstone"). In March 2000, after consulting a lawyer, Larry Travis signed a release waiving all claims against his employer and landlord, Cornerstone, based on a payment of \$900 for wages and \$200 for a security deposit. Larry Travis's appeal states that the release was signed "under extreme financial stress" and after being told by the Industrial Relations Officer that signing the release would not result in Cornerstone being relieved of its obligations under the *Employment Standards Act* (the "Act").

This decision is based on written submissions from the Employee and the Employer.

ISSUE

Can the Director refuse to investigate a complaint if the parties have executed a release of all claims?

FACTS

Larry Travis was employed as a caretaker by Cornerstone. At the conclusion of his employment he was fired. He filed a complaint with the Director claiming 244 hours of overtime and compensation for length of service.

Larry Travis was bankrupt and unable to obtain credit at the end of his employment. His tenancy ended with his employment and he needed money to secure new housing for his family. Cornerstone agreed to pay the security deposit of \$200 and wages of \$900 if Larry Travis agreed to sign a release.

Larry Travis consulted a friend, Russ Crum, who is a lawyer about the situation. Mr. Crum reviewed the release with Larry Travis and recommended removing a clause from the release, which was negotiated with Cornerstone. Larry Travis then signed the release and received the agreed payment.

Larry Travis wishes to pursue his claims through a complaint under the *Act* in spite of having agreed in the release not to do so.

The Law

The onus is on the appellant in an appeal of a Determination to show on a balance of probabilities that the Determination ought to be varied or cancelled.

The settlement of a dispute between an Employer and an Employee meets one of the purposes of the *Act* as set out in Section 2.

2) *The purposes of this Act are as follows:*

(a) to provide fair and efficient procedures for resolving disputes over the application and interpretations of this Act; .

Fostering an environment in which disputes can be resolved finally by the parties is an objective for the Director as the administrator of the *Act*.

In *Re Bowie* BC EST #D286/99 Adjudicator Thornicroft was dealing with a situation where the Director did not investigate a complaint because of the submissions of the employer that the employee had executed a settlement release after consulting a lawyer. The Adjudicator stated the guiding principles of the Tribunal as follows.

“ The Tribunal will not overturn bona fide settlements particularly when the settlement was reached after the complainant received legal advice and where the effect of the settlement is to pay the complainant something more than the minimum entitlements provided for in the *Act*—see e.g., *Small*, BC EST #D032/98.”

In *Small*, BC EST #D032/98 Adjudicator Crampton was asked to consider a situation where, after counsel had negotiated a settlement, one of the terms was the requirement that a mutual release be signed. *Small* signed the release and *Wright* refused to sign. The objection to signing related to “high pressure tactics” in part. The adjudicator found there was nothing on the face of the settlement to offend the provisions of the *Act* and found there was a settlement. The Adjudicator stated

“The Tribunal expects that when parties conclude a settlement in good faith, the terms and conditions of that agreement will be respected by the parties.”

In *Re August* BC EST #D225/96 Adjudicator Thornicroft was dealing with another claim where the employee had signed a release. In his reasons for dismissing the claim he said

Second, the Tribunal will not look behind bona fide settlement agreements unless it can be affirmatively shown that the settlement falls below the minimum statutory liability of the employer under the *Act* (see s. 4). *August* has executed a full and final release and, therefore, is not legally entitled to claim additional compensation unless it can be said that the total settlement, in this case \$9,379, falls short of what the employer was obliged to pay to *August* under the *Act*.

The *Act* specifically prohibits contracts between employers and employees, which have the effect of canceling the basic provisions of the *Act*. Section 4 provides as follows.

Requirements of this Act cannot be waived

- 4) *The requirements of this Act or the regulations are minimum requirements, and an agreement to waive any of those requirements is of no effect, subject to sections 43, 49, 61 and 69.*

ANALYSIS

Employers and Employees may not contract out of the minimum requirements of the *Act*. A release is a form of contract for these purposes. The execution of a settlement release does not waive the obligations of the employer or employee to comply with the *Act*.

The onus of proving the claim that the *Act* has been breached is on the appellant. The Tribunal will not reopen a claim unless there is evidence that there was noncompliance with the provisions of the *Act*.

In assessing whether there are concerns about compliance the Adjudicator must look at all of the circumstances presented in the evidence provided on the Appeal. In this situation the employee was under a lot of financial pressure and needed the money offered in the settlement. This reality is not uncommon at the time of negotiations and settlement and is therefore not definitive. If the employee had acted without professional advice there would have been greater concern. Larry Travis did have the benefit of legal advice as evidenced by the changes to the release and the notes of the lawyer provided.

The appeal does not set out any evidence of a breach of the *Act*, which has not been remedied by the amount of the settlement.

Based on the evidence before me, I cannot find any basis on which to disturb the Determination. Larry Travis's appeal is dismissed.

ORDER

Pursuant to section 114 (1)(a) the appeal is dismissed.

Pursuant to section 115 of the *Act*, Determination ER: 074-398 dated June 14, 2000 is confirmed.

April D. Katz

April D. Katz
Adjudicator
Employment Standards Tribunal