

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 -

Michael Bateman

- of a Determination issued by -

The Director Of Employment Standards
(the “Director”)

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/638

DATE OF DECISION: September 23, 1997

DECISION

OVERVIEW

This is an appeal by Michael Bateman, under Section 112 of the Employment Standards *Act* (the “*Act*”), against a Determination which was issued on July 24, 1997 by a delegate of the Director of Employment Standards. The Director’s delegate found that Mr. Bateman’s complaint concerned the recovery of certain expenses allegedly owed to him by his former employer, Shavick Entertainment Inc. and, therefore, decided that no action would be taken concerning the complaint. He also found that the complaint had been made outside the time period established by Section 74 of the *Act*.

I have made this decision based on my review and analysis of the written material which was submitted to the Tribunal.

ISSUES TO BE DECIDED

There are two issues to be decided:

1. Can unpaid expenses be recovered under the provisions of the *Act*? and
2. Is Mr. Bateman entitled to receive compensation for length of service?

FACTS

Mr. Bateman was employed as Editor/Post-Production Supervisor by Shavick Entertainment Inc. (under the terms of a written employment agreement) from October, 1994 to December, 1996 at a salary of \$1,600.00 per week. He was given written notice on October 24, 1996 that his employment with Shavick would be terminated upon the delivery date of the motion picture “Exception to the Rule”. His last day of employment was December 13, 1996.

In Mr. Bateman’s complaint dated July 14, 1997 he sought to recover \$1,600.00 in compensation for length of service and \$442.56 in unpaid expenses for telephone charges and taxi fares.

The Determination dealt with Mr. Bateman’s complaint in the following manner:

I have reviewed the complaint which you recently filed with this office. In the process I noted that:

- a According to Section 76(2) The director may refuse to investigate complaint or may stop or postpone investigating a complaint if:

(a) the complaint is not made within the time limit in Section 74(3),

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

As the complaint you filed is regarding expenses, which are not recoverable under the *Act* and you filed your complaint beyond the six(6) month time limit, no action can be taken by the Branch in regards to your complaint.

Should you wish to discuss this matter further, please feel free to contact me.

In this appeal to the Tribunal, Mr. Bateman provided a lengthy explanation of the events which transpired once he contacted the Employment Standards Branch for the first time in April, 1997. It appears that he provided that chronology to explain why he did not submit a complaint to the Employment Standards Branch until July 14, 1997.

ANALYSIS

The Determination gives two reasons for dismissing Mr. Bateman's complaint:

- “(a) the complaint was not made within the time limits in Section 74(3); and
- (b) the *Act* does not apply to the complaint.” (sic)

Mr. Bateman made a lengthy submission to the Tribunal on the issue of why his appeal should be heard despite the requirement in Section 74(3) of the *Act* for an employee whose employment has been terminated to deliver a complaint within six months after the last day of employment. However, this appeal can be decided without relying on that provision of the *Act*.

As noted earlier, Mr. Bateman's complaint sought recovery of \$1,600.00 in compensation for length of service and \$442.56 in expenses.

Section 1 of the *Act* excludes “allowances or expenses” from the definition of “wages” for purposes of this *Act*. For that reason, I concur with the finding made by the Director's delegate that Mr. Bateman cannot rely on the *Act* to assist him in recovering from his previous employer “allowances or expenses” to which he may be entitled.

Section 63 of the *Act* places a liability on employers to pay compensation for length of service. That liability is deemed to be discharged under certain circumstances, including where the employee is given written notice of termination. There is no dispute that Shavick gave written notice of termination to Mr. Bateman on October 24, 1996, some seven weeks prior to his last day of employment (December 13, 1996). That seven-week

period exceeds the two-week period to which Mr. Bateman was entitled under Section 63(3)(a)(ii) of the *Act*. Therefore, Shavick did not breach Section 63 of the *Act*, and Mr. Bateman is not entitled to compensation for length of service.

I do not know why the Director's delegate did not include a reference to Section 63 of the *Act* in the Determination. Had such a comment been included it may have given Mr. Bateman some further assurance that the merits of his complaint had been considered despite the fact that it was made outside the time limits established by Section 74(3) of the *Act*.

In his appeal to the Tribunal, Mr. Bateman submits that he would "...be happy just to receive (his) pay check" for the week ending December 13, 1996. I find that, that is not a proper ground to appeal the Determination because it is an issue which was not part of Mr. Bateman's complaint which was concerned only with non-payment of compensation for length of service and expenses.

This is an appeal against the Determination which was made by the Director's delegate following his investigation of Mr. Bateman's complaint. This is not an opportunity to re-investigate a complaint. One of the purposes of the *Act* (which is set out in Section 2) is to provide fair and efficient procedures for resolving disputes. It would be neither fair nor efficient if the Tribunal were to allow new grounds of complaint to be added to an appeal of a Determination.

For all of these reasons I find that I concur with the finding made by the Director's delegate that Mr. Bateman cannot rely on the *Act* to recover unpaid expenses from his former employer. I also find that Mr. Bateman is not entitled to compensation for length of Service under Section 63 of the *Act*.

ORDER

I order, under Section 115 of the *Act*, that the Determination be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/sf