

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 -

Terry F. Haskins

- of Determinations issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Lorne D. Collingwood

FILE NO.: 1999/511

DATE OF HEARING: October 29, 1999

DATE OF DECISION: November 16, 1999

DECISION

OVERVIEW

Terry F. Haskins (“Haskins”, also, “the Appellant”) appeals a Determination by a delegate of the Director of Employment Standards dated July 27, 1999. The appeal is pursuant to section 112 of the *Employment Standards Act* (the “Act”).

The Determination stems from a Complaint by Haskins. Haskins’ claim is that he is owed wages by Stable Enterprises Limited operating as Boyd’s Mill (“Stable” or, “the employer”). The Determination is that he is not entitled to wages. In explaining the decision, the delegate states that the employee’s record of work is contradicted by the employer’s record of work and does not appear to have been contemporaneously produced as work was performed. Stable’s sales records are said to inconsistent with the Complaint. Persons interviewed by the delegate did not confirm significant weekend work by Haskins. The delegate also notes that, even though it is alleged by Haskins that he worked for months without being paid for his extra weekend work, there is no evidence that the employee raised the matter of his claim until after he was terminated.

Haskins, on appeal, makes his claim for wages once again. He claims that he worked in excess of forty hours a week for the better part of six months and that he has not been paid for any of that overtime work. According to Haskins, he did ask to be paid before being terminated and there are witnesses who are able to confirm the extent of his work.

APPEARANCES

Terry F. Haskins	On his own Behalf
Ian Boyd	For the employer

ISSUE TO BE DECIDED

Is there evidence to indicate that Haskins is owed some amount of wages?

FACTS

Ian Boyd and Lee-Ann Boyd own Stable.

It is clear that Haskins worked for Stable in the last 6 months of 1998. For the first few months of the employment, Ian Boyd ran the mill. He left to work elsewhere and at that point Haskins began to operate the mill. When Boyd returned to Stable in December, there

was some sort of confrontation, the parties indicate that it was of a personal nature, and Haskins was terminated. He was paid a weeks' severance and given 5 days to move out of the trailer in which he had been living.

According to Ian Boyd, when he left for work elsewhere and Haskins took over the running of the mill, his wife, Lee-Ann Boyd, told Haskins that he was not to work any overtime. Haskins' claim is that he worked 8 hours a day, Monday through Friday, and another 6 or 7 hours on both Saturday and Sunday. If his record is correct, he worked weeks without a day off, in one stretch in September and October, 41 days without ever taking a day off.

Ian Boyd and Haskins demonstrate an intense dislike for one another.

Haskins does not provide the Tribunal with further evidence in support of his claim. He makes no attempt to establish that his record of work is in fact a contemporaneous record. Haskins claims that there are witnesses that are in a position to confirm the work that he did on weekends but he does not present any such witness to me.

ANALYSIS

What I must decide in this case, the appellant being the Complainant, is whether the appellant has or has not met the burden for persuading the Tribunal that the Determination ought to be varied, or referred back to the Director, for reason of what is either an error in fact or in law.

Haskins claim is that the delegate is wrong on the facts.

The delegate's investigation included interviews and a review of available records, both records of work and the company's sales records. The delegate has decided that the employee's record of work is not contemporaneous but produced at some later point. That is reason to believe that it is, most likely, not an accurate record. On appeal, Haskins fails to provide evidence which shows, or through argument show, that the delegate conducted a less than diligent investigation or that any of her conclusions are in error. His appeal, as such, is one which may be dismissed pursuant to section 114 of the *Act* as one which is frivolous, vexatious or trivial or not brought in good faith. That is not to say that Haskins is not serious about his appeal. It is not to him frivolous or trivial. But the appellant has not challenged the Determination's material conclusion(s) in any important way. As such, I consider his appeal, in a legal sense, to be trivial and frivolous.

- 114** (1) The tribunal may dismiss an appeal without a hearing of any kind if satisfied after examining the request that
- (a) the appeal has not been requested within the time limit in section 112 (2),
 - (b) the appeal is not within the tribunal's jurisdiction, or
 - (c) the appeal is frivolous, vexatious or trivial or is not brought in good faith.

Haskins does not appear to understand the role of the Tribunal on appeal. I believe that he expected that the Tribunal would, on appeal, undertake its own investigation of the Complaint and then review the Determination with a view to seeing whether it was correct in all respects. That is a common mistake. The Tribunal is not obligated to investigate complaints. It is the job of the Director and her delegates to investigate the Complaint. It is the job of the Tribunal to consider appeals and decide whether the appellant shows, on the basis of evidence or through argument, that there is reason to vary or cancel a Determination, or refer a matter or matters back to the Director. Haskins has not done that in this case.

The Director has a statutory and legal obligation to adhere to the principles of fairness and reasonableness when exercising her authority under the *Act*. Unless there is a rational basis for its conclusions, the Determination may be appealed and then varied or even cancelled by the Tribunal. Section 76 of the *Act* requires that the Director must investigate complaints like that by Haskins but on doing so, the Director may bring an investigation to a close if there is not enough evidence to prove the complaint.

76 (1) Subject to subsection (2), the director **must investigate a complaint** made under section 74.

(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.

(3) Without receiving a complaint, the director may conduct an investigation to ensure compliance with this Act. (my emphasis)

An investigation was conducted into Haskins' Complaint. On doing that, the delegate concluded that there is not sufficient evidence to prove the complaint and not a rational basis for a conclusion that the Complainant is entitled to wages. Haskins has not persuaded me that the delegate conducted a less than diligent investigation, nor shown that any of the delegate's conclusions are in error. As such, I find that the appeal should be dismissed and the Determination confirmed.

ORDER

I order, pursuant to section 115 of the *Act*, that the Determination dated July 27, 1999 be confirmed.

Lorne D. Collingwood
Adjudicator
Employment Standards Tribunal