

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-

Lee-Jay Strifler

(“Strifler”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE NO.: 97/749

DATE OF DECISION: January 7, 1998

DECISION

OVERVIEW

This is an appeal brought by Lee-Jay Strifler (“Strifler”) pursuant to section 112 of the *Employment Standards Act* (the “*Act*”) from a Determination issued by the Director of Employment Standards (the “Director”) on September 10th, 1997 under file number 081442 (the “Determination”).

In Strifler’s original complaint, filed against his former employer, Pacific Coast Diving Club (a society incorporated pursuant to the provisions of the B.C. *Societies Act*--“Pacific Coast” or the “employer”), he claimed unpaid wages for August 1996 and termination pay under section 63 of the *Act*. Strifler alleged that he was terminated, without just cause or notice, on August 24th, 1996. Prior to his termination, Strifler was a diving coach employed by Pacific Coast, a Victoria area diving club.

After investigating the matter, the Director dismissed Strifler’s unpaid wage complaint on the basis that, in fact, he had not undertaken any work for Pacific Coast during the month of August 1996. Indeed, the Director determined that Pacific Coast was not operating during the month of August 1996. Strifler’s claim for compensation for length of service (section 63 of the *Act*) was dismissed on the ground that the employer had just cause to terminate Strifler’s services.

TIMELINESS OF THE APPEAL

As noted above, the Determination was issued on September 10th, 1997; the appeal in this matter was filed on October 10th, 1997, a date beyond the statutory time limit set out in section 112 of the *Act*. According to the information provided by the appellant, which for the purposes of section 109(1)(b) of the *Act* I am prepared to accept without qualification, the Determination was sent out by registered mail to the appellant’s parents’ address and was not actually in the hands of the appellant until October 3rd, 1997. On Sunday, October 5th, 1997 the appellant left a voice mail message with the Tribunal indicating his desire to appeal the Determination and he subsequently spoke to a Tribunal staff member and requested an appeal form which was completed and filed on October 10th, 1997.

In light of the foregoing circumstances, which demonstrate an ongoing *bona fide* intention to file and appeal, and in the absence of any obvious prejudice to any party should an extension be granted, I am satisfied that the appellant ought to be granted an extension of the time for filing an appeal until October 10th, 1997 and I hereby make that order.

ISSUES TO BE DECIDED AND ANALYSIS

Strifler's appeal is predicated on a number of assertions. I will deal with these assertions under the headings "Just Cause" and "Unpaid Wage Claim".

Just Cause

Strifler alleges that some of the witnesses who were interviewed by the Director's delegate during the course of his investigation gave false testimony. For example, Strifler alleges that his former roommate and fellow Pacific Coast employee, Michael Cook, gave false testimony because of a fear that if he supported Strifler, "he [Cook] would lose his job and have to return to the U.S."

Similarly, Strifler asserts that a mother of one of the club's members gave false testimony because "if she were to take a neutral position of not defend (sic) [the employer's] interests she would not have a place for her [ten-year old] son to dive".

In my view, the foregoing attack on the credibility of two important witnesses is entirely speculative and is not supported by credible, or any, independent evidence. Further, the evidence of these two witnesses, standing alone, more than amply demonstrates that the employer had just cause for dismissal. In particular, these two witnesses confirmed that Strifler was engaged a deliberate attempt to undermine and discredit his immediate supervisor and had, on at least one occasion, removed a confidential club file (containing, *inter alia*, personal information about another employee and an address list of the club members' parents) without authorization.

Unpaid Wage Claim

Strifler acknowledges, as alleged in the Determination, that he was away from the Victoria area in the first part of August 1996 to attend a wedding. Nor does he deny that the club was not operating in August 1996. Strifler does not allege that he, in fact, worked at the club during August 1996. His claim for unpaid wages is based on two grounds: first, Strifler says that another employee was paid for August 1996 and thus, so should he; second, he says that the employer agreed to pay him wages for August. I should note that the employer denies this latter allegation.

I must confess that the logic of the first argument completely escapes me. If, and I say if because there is no evidence before me on the point, the employer did pay another employee for the month of August, that payment has no legal effect vis-à-vis Strifler's wage claim under his personal contract of employment. As for the second point, there is simply no evidence whatsoever to support Strifler's assertion. Further, in the absence of the provision of employment services to the club by Strifler in August 1996, such a promise, even if made, would not be supported by any consideration and thus, on that account, would have no legal validity as it would appear to be a purely gratuitous promise and, accordingly, unenforceable as a matter of law.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination in this matter be confirmed as issued.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal