

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-

Koffi Amouzou
("Amouzou ")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR:	C. L. Roberts
FILE NO:	98/695
DATE OF DECISION:	December 30, 1998

DECISION

The appeal is based on written submissions by Koffi Amouzou and Karen Vanderpost, on behalf of Canada Bread Company Limited (Venice Bakery Ltd.).

OVERVIEW

This is an appeal by Koffi Amouzou ("Amouzou"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued October 16, 1998. After reviewing Amouzou's complaint against Venice Bakery Ltd ("Venice"), the Director determined that no action could be taken by the Director, since Amouzou was covered under a collective agreement. The Director stopped the investigation under Section 76(2) of the *Act*.

ISSUE TO BE DECIDED

At issue is whether the Director erred in not investigating the complaint.

FACTS

In his letter to Amouzou, the Director's delegate stated,

The employer representative and the union representative have both agreed that you are covered by the collective agreement, even though you did not pay union dues. The employer representative, Karen VanderPost has agreed to discuss you [sic] claim for compensation pay with you...

ARGUMENT

As I understand the letter of appeal, Amouzou contends that the Director's delegate erred in finding that he was a member of a collective agreement. He states that he did not sign any documentation, has not agreed to be a member, and has never had any contact with anyone from the union. Further, he says that his name is not on the union list. He feels that the agreement does not, and should not apply to him. Because he is not a member of the union, he argues that he is entitled to severance pay.

Venice Bakery provided the Tribunal with an excerpt from the Collective Agreement.

Article 2.02 provides

This agreement covers all employees of the Employer in the bargaining unit established in the certification issued by the British Columbia Labour Relations Board.

Ms. VanderPost stated that because Amouzou worked in the Sanitation Unit as a Plant Assistant, he fell within Schedule A of the Collective Agreement.

Ms. VanderPost further indicated that where an employee worked less than 15 hours biweekly, no union dues were payable.

DECISION

The burden of establishing that a determination is incorrect rests with the Appellant. On the evidence provided, I am unable to find that the Determination is in error.

Section 76(2) of the *Act* provides that the Director may refuse to investigate a complaint or may stop or postpone investigating a complaint if

...
(b) the *Act* does not apply to the complainant.

Venice Bakery provided information to the Director's delegate which indicated that Amouzou is a member of the United Food and Commercial Workers International Union (UFCW).

The fact that Amouzou has not had any contact from union representatives, nor agreed to be a member, is not determinative of whether in fact he is a member. On the basis of the evidence provided to the Director's delegate, he declined to investigate further.

I have no evidence from Amouzou to support his argument that the Determination is incorrect.

It appears that Amouzou has not approached Venice Bakery, as suggested by the Director's delegate, to determine his rights under the agreement. Nevertheless, I find that the proper forum for determining Amouzou's rights is the grievance procedures under the collective agreement, not the *Employment Standards Act*.

ORDER

I order, pursuant to Section 115 of the *Act*, that the Determination, dated October 16, 1998 be confirmed.

Carol Roberts
Adjudicator
Employment Standards Tribunal