

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an application for reconsideration pursuant to Section 116 of the

Employment Standards Act, R.S.B.C. 1996, c. 113

-by-

Abbott Integration Systems Inc.

(“Abbott”)

-of a Decision issued by-

The Employment Standards Tribunal

(the “Tribunal”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 98/308

DATE OF DECISION: September 9, 1998

DECISION

FACTS

On November 13th, 1997 a delegate of the Director of Employment Standards issued a Determination under file number 080-914 (the "Determination") against Abbott Integration Systems Inc. ("Abbott") pursuant to which Abbott was held liable for \$15,659.10 on account of unpaid wages, termination pay and vacation pay owed to its former employee, William Keegan ("Keegan").

On December 8th, 1997, Abbott appealed the Determination to the Tribunal--this appeal was filed by Chris Holmes, on behalf of Abbott. Mr. Holmes acted as Abbott's representative during the initial investigation of Keegan's complaint and continued to represent Abbott while the matter was pending before the Tribunal. Abbott's appeal was filed under Tribunal file number 97/900.

In its appeal, among other grounds, Abbott alleged that some other corporate entity was liable for Keegan's unpaid wages. Abbott's appeal was initially set down to be heard on March 2nd, 1998 and was subsequently rescheduled, over the objection of Keegan, to be heard on April 3rd, 1998. On April 3rd, 1998, after both parties made some opening remarks, the parties proceeded, with the assistance of the adjudicator, reached a settlement. I might add that I see nothing improper with an adjudicator offering to mediate a settlement between the parties so long as the parties consent--as they did here--to participate in a mediation process. Indeed, section 114(2)(b) of the *Act* specifically authorizes the Tribunal to "recommend that an attempt be made to settle the matter".

The one-page handwritten settlement agreement, dated April 3rd, 1998 reads, in its entirety, as follows:

Abbott Integration Systems Inc. - & - William Keegan

Settlement Agreement

- 1. Chris Holmes, on behalf of Abbott Integration Systems Inc. agrees to the following:*
- 2. Pay \$7500 (seventy-five hundred dollars) to William Keegan in the following installments:*

<i>April 9, 1998</i>	<i>\$2000.00</i>
<i>May 8, 1998</i>	<i>\$2000.00</i>
<i>June 9, 1998</i>	<i>\$2000.00</i>
<i>July 9, 1998</i>	<i>\$1500.00</i>

3. A bank draft or money order in the above amounts will be delivered to William Keegan by NOON on the above dates at Pheno-Tech, 7572 Progress Way, Delta, B.C.

4. The appeal (TRIB. FILE NO. 97/900) will be withdrawn today.

5. If any payment is not made, in accordance with the above conditions, this agreement is null and void and the full amount of the Determination issued November 13, 1997 will

become due and owing.

“signed”

Frederic C. Holmes
Date April 3, 1998

“signed”

William J. Keegan
Date April 3, 1998

On April 3rd, 1998, Mr. Holmes forwarded a signed hand-written note to the Tribunal which referred to Abbott’s appeal and Tribunal file number 97/900 and continued:

“I withdraw the appeal dated Dec. 8, 1997 in the case of William Keegan vs. Abbott Integration Systems, Inc. in accordance with the agreement reached between all parties today”.

On April 7th, 1998 the Tribunal Registrar wrote to Abbott, Keegan and to the Director’s delegate confirming the fact of the settlement and advising that the Tribunal had closed its file.

The \$2,000 payment due on April 9th, 1998 was not made and, accordingly, by reason of paragraph 5 of the settlement agreement, the settlement agreement was “null and void” and Abbot thus became liable to pay Keegan the full amount due under the Determination.

On April 24th, 1998, a solicitor whom I understand to be representing both Abbott and Mr. Holmes, wrote to the Tribunal Registrar. This letter firstly states that a determination was issued against Mr. Holmes on November 13th, 1997. Of course, that is not correct--the Determination was issued against Abbott and Mr. Holmes has no personal liability under the Determination nor does he have any personal liability under the settlement agreement. Secondly, Mr. Holmes’ solicitor, after noting that Mr. Holmes was not legally represented before the Tribunal (I note that neither was Keegan), asked that the appeal be “put back on the list for hearing”. There is a suggestion in the solicitor’s letter that perhaps Mr. Holmes did not fully appreciate what he was signing. For my part, I cannot fathom where Mr. Holmes’ confusion might lie--the settlement agreement is clear and unambiguous and certainly should have posed no comprehension problems for an apparently experienced businessman such as Mr. Holmes.

In any event, on April 28th, 1998, the Tribunal Registrar wrote to the solicitor stating, in part:

“On April 3, 1998 Mr. Holmes signed a settlement agreement with William Keegan and he forwarded a letter to the Tribunal withdrawing his appeal. Therefore, there is no appeal in front of the Tribunal and I decline to proceed with your request to ‘...have this matter put back on the list for hearing’.”

THE REQUEST FOR RECONSIDERATION

On May 20th, 1998 the solicitor wrote to the Tribunal seeking reconsideration, pursuant to section 116 of the *Employment Standards Act* (the “Act”), of the Registrar’s decision embodied in her April 28th letter. The grounds for reconsideration were set out as follows:

“Mr. Holmes was appealing a decision of the Director and at the Appeal hearing he entered into a settlement with Mr. Keegan. At this time Mr. Holmes was neither advised or represented by counsel. What occurred at this Appeal is in our submissions a failure of the Adjudicator to comply with the principals [sic] of natural justice. At the hearing the adjudicator, who’s [sic] role is to be an impartial judge, implied to Mr. Holmes that he would likely find against him and in essence compelled Mr. Holmes to enter into an agreement with Mr. Keegan...Obviously this is not the appropriate conduct for a neutral judicial officer. Therefore the only course is to engage in a reconsideration.”

ANALYSIS

It is important to understand what “decision” is being reconsidered. The Registrar refused to proceed with the appeal because the matter had been settled between the parties. In essence, counsel for Abbott now wishes to have that settlement agreement declared null and void by this Tribunal.

For my part, I fail to see how this Tribunal has any jurisdiction in the matter. The Tribunal does not have any original statutory jurisdiction to enforce or to set aside a contractual agreement regarding unpaid wages reached between an employer and an employee--that jurisdiction rests with either the courts or the Director. The Tribunal hears *appeals* with respect to determinations issued under the *Act* or *Regulation*. The Registrar correctly held that as of April 3rd, 1998--when Abbott formally withdrew its appeal--there no longer was any pending appeal before the Tribunal with respect to the Determination.

Further, as of April 3rd, 1998, it is arguable that there was no longer any “determination” in existence--certainly, as of April 3rd, 1998, Keegan was not in a position to enforce his claim as set out in the Determination. If Abbott’s appeal was to go forward at all, of course, it could only go forward on the issue of the validity of the parties’ settlement agreement--an issue, as noted above, that does not fall within the Tribunal’s statutory mandate.

The parties reached a settlement which, in a very clearly worded and straight-forward manner, provided for certain payments to be made by Abbott to Keegan on certain dates. In the event of a failure to abide by the terms of settlement (which represented a substantial reduction in Abbott’s liability as originally determined by the Director) “the full amount of the Determination issued November 13, 1997 will become due and owing”. Thus, if Abbott failed to pay some or all of the monies (\$7,500) due to Keegan as set out in the parties’ settlement agreement, Keegan would be entitled to claim \$15,659.10 as against Abbott (*i.e.*, the amount the Director’s delegate originally found to be owing). If, as is now alleged by Abbott, the settlement agreement is itself void (say,

by reason of duress, undue influence, misrepresentation or some other valid legal doctrine), that is a matter for the civil courts to address.

I should add that even if I was of the view that this Tribunal had the jurisdiction to set aside a settlement agreement reached between the parties, I would not do so in this case. First, in my opinion, and given the circumstances of this case, the fact that one or both parties were not represented by legal counsel is of no particular moment. Second, the allegation--and it should be noted that it is nothing more than an allegation--that the adjudicator was predisposed against Abbott is not supported by any evidence and is vigorously denied by Mr. Keegan. For his part, Mr. Keegan stated in his submission to the Tribunal dated June 6th, 1998 that the adjudicator made it clear to both parties that the ultimate result of the appeal could go against either one and that both parties were free to seek whatever independent advice they wished.

Further, Abbott's allegation that the adjudicator "implied to Mr. Holmes that he would likely find against him and in essence compelled Mr. Holmes to enter into an agreement with Mr. Keegan" appears to run counter to the initial submission made by Abbott's counsel in his April 24th, 1998 letter to the Tribunal where he noted:

"Mr. Holmes was put in the position either intentionally or inadvertently of believing that if he did not enter in to [sic] the Agreement there would be a determination made against him in the full amount. Again I cannot imagine a adjudicator intentionally doing this but for an inexperienced individual such as Mr. Holmes in a alien environment could easily misunderstand, feel unintended pressure or simply make a fundamental error without the benefit of independent legal advice." [sic]

It would appear that the suggestion that the adjudicator "compelled" Abbott to enter into an agreement with Keegan was only raised after the Tribunal Registrar had refused to allow Abbott's appeal (which had been withdrawn) to go forward.

ORDER

The application for reconsideration of the Registrar's April 28th, 1998 decision is refused.

Kenneth Wm. Thornicroft, *Adjudicator*
Employment Standards Tribunal