

Date: 20011004  
Docket: S067160  
Registry: New Westminster

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Oral Reasons for Judgment  
Mr. Justice Burnyeat  
Pronounced in Chambers  
October 4, 2001

IN THE MATTER OF THE JUDICIAL REVIEW PROCEDURE ACT  
R.S.B.C. 1979, C. 209

BETWEEN:

**JERZY RUDOWSKI**

Petitioner

AND:

**DIRECTOR OF EMPLOYMENT STANDARDS, THE EMPLOYMENT STANDARDS  
TRIBUNAL and TIMOTE'S TRUCKING LTD.**

Respondents

Jerzy Rudowski

Appearing on own behalf

Counsel for the Respondent,  
Director of Employment Standards

A.J. Adamic

Counsel for Respondent,  
Employment Standards

MacTavish

Counsel for the Respondent,  
Timote's Trucking Ltd.

Murdock

[1] **THE COURT:** This is a petition pursuant to the *Judicial Review Procedure Act*. The Petitioner, Mr. Rudowski, filed his petition with the court on May 28, 2001. Subsequent to that,

an amendment was made by hand on the original petition. That amendment was not made in accordance with the Rules of Court which would require the filing of a new Petition with underlined portions indicating the changes made. In dealing with this application, I will overlook what was done. In doing so, I do not endorse or condone what was done. However, I am satisfied that, for the purposes of this application, nothing turns on the fact that an addition was made at the registry in an inappropriate way.

[2] The first matter raised by way of preliminary objection is that Mr. Rudowski has not set out the grounds in the Petition or elsewhere for the relief he seeks or the nature of the relief sought although s. 14 of the *Judicial Review Procedure Act* requires that those matters be set out in a Petition. Similarly, the Rules of Court require that a Petitioner set out the facts upon which the Petition is based. These deficiencies are critical in view of s.10 of the *Employment Standards Act* which provides that a decision or order made by a tribunal under that Act is final and conclusive and is not open to review in a court on any grounds on any matter "in which it [the Tribunal] has jurisdiction..." Accordingly, it is critical that the Petition of Mr. Rudowski set out the jurisdictional error or errors he alleges.

[3] On the face of the Petition there is not a jurisdictional error shown. In fact, there is virtually nothing in the Petition which would indicate anything about the matters that Mr. Rudowski wishes the Supreme Court of British Columbia to review. The decision which deals with facts closest to the facts that I find here is the decision of this court in **Mayden v. Workers' Compensation Board of British Columbia and Cominco Ltd.** 2001 B.C.S.C. 725. In that case, Madam Justice Boyd noted that the petitioner appeared to request the review of an earlier decision even though it was only the later decision which was open to judicial review. As well, Madam Justice Boyd concludes:

(2) the Petition fails to state the grounds upon which the relief is sought. As the case authorities note, an omission to state the grounds is fatal. (Re: **Saanich Inlet Preservation Society et al. v. Cowichan Valley Regional District** (1981), 130 D.L.R. (3<sup>rd</sup>) 716 (B.C.S.C.); (1983), 147 D.L.R. (3<sup>rd</sup>) 174 (B.C.C.A.).

(3) further, the Petition fails to state any grounds upon which it is based. No specific jurisdictional error is alleged in the Petition and a failure to do so is fatal to the Petition. (**Greyhound Canada Transportation v. Workers' Compensation Board** (2000), 76 B.C.L.R. (3<sup>rd</sup>) 266 (B.C.C.A.); **Canada Safeway Limited v. British Columbia Workers' Compensation Board** (1998), 59 B.C.L.R. (3<sup>rd</sup>) 317 (B.C.C.A.). (at para. 6)

[4] The Petition of Mr. Rudowski raises both of the defects noted by Madam Justice Boyd. I am asked to review a prior decision (August 30, 2000) rather than review the last decision (November 9, 2000). The relief sought in the Petition is not stated. The grounds upon which the Petition is based are not set out. There is no jurisdictional error alleged. As well, Mr. Rudowski wishes me to substitute my decision for the decision of the tribunal. It would be inappropriate for me to do so. If I found that a jurisdictional error had been made, my jurisdiction would be limited to referring the matter back for rehearing. The matters which have been raised in the Petition and submissions of Mr. Rudowski are matters which were before the two Tribunals hearing his complaint and those matters were canvassed by those Tribunals.

[5] Even if I am wrong in concluding that the omissions noted above are fatal to the Petition which is before me, I am also satisfied that the materials before me and the submissions made by Mr. Rudowski do not establish either that a jurisdictional error has been made or that there were not sufficient facts before the Tribunals which would allow those Tribunals to come to the conclusions that they did. In fact, I can conclude that I would have come to the same conclusion.

Accordingly, even if I am correct in concluding that Mr. Rudowski must show a jurisdictional error, I would not be in a position to conclude that there are grounds upon which I could otherwise review the decisions which were reached. I am satisfied that there are sufficient factual grounds upon which they could reach the decisions that they did.

[6] Accordingly, the Petition is dismissed. I will now hear submissions regarding costs although my indication is that the parties bear their own costs.

[7] MR. ADAMIC: We're prepared to accept that the parties bear their own costs.

[8] THE COURT: Mr. McTavish?

[9] COUNSEL: My lord, my current instructions are to seek costs but I'm in your hands.

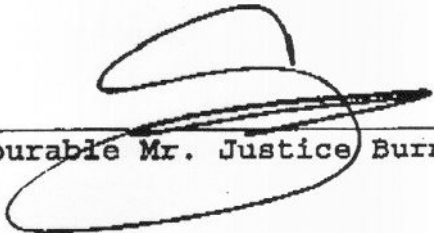
[10] THE COURT: I'll hear your submissions.

[11] COUNSEL: I have no instructions to seek costs, my lord.

[12] THE COURT: Mr. Rudowski, ordinarily when you're successful on a matter before the court, the successful party would ordinarily be entitled to costs against the unsuccessful party. I have decided that I will not order costs against you. In dismissing your Petition, I am ordering that

everybody bear their own costs. In other words, you're not in a position to seek legal costs against them and they're not in a position to seek legal costs against you, even though you were unsuccessful and they were successful in the hearing.

[13] MR. RUDOWSKI: Thank you, your honour.



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The Honourable Mr. Justice Burnyeat