

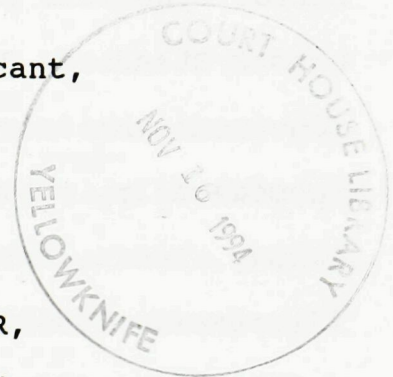
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

CADILLAC INVESTMENTS LTD.,
Applicant,

- and -

LABOUR STANDARDS BOARD and
the LABOUR STANDARDS OFFICER,
Respondent.



REASONS FOR JUDGMENT
OF THE HONOURABLE ALLAN H. WACHOWICH
ASSOCIATE CHIEF JUSTICE

This application in the nature of *certiorari* is brought by Cadillac Investments on the ground that the Labour Standards Board exceeded their jurisdiction in deciding that one Tony Knezewich was an employee of the Applicant within the meaning of the *Labour Standards Act*, R.S.N.W.T. 1988, c.L-1.

On May 27, 1991, the Labour Standards Officer issued Certificate No. 1425, awarding Tony Knezewich wages in the amount of \$11,295.04 against the Applicant. This award represented the Officer's calculation of overtime pay owing to Knezewich as an employee of the Applicant.

Cadillac Investments Ltd. appealed to the Labour Standards Board by letter dated June 18, 1991 on the grounds that Knezewich was a manager and thus excluded under s.2(2) of the *Labour Standards Act* from compensation for overtime pay. The Labour Standards Board issued questionnaires to the parties and received submissions in letter form from their solicitors. Specifically, submissions were made by the parties on matters of salary, hours, handling of cash, time off, and powers to hire and fire staff. Cadillac Investments and Knezewich took conflicting positions on the issue of whether or not Knezewich was an employee.

On May 4, 1992 the Labour Standards Board decided that Knezewich was an employee of the Applicant, and ordered wages payable in the amount of \$8,584.23.

Mr. Justice de Weerd of the Supreme Court of the Northwest Territories dismissed the Board's application to stay the *certiorari* proceedings pending the appeal process provided by s.53(4) of the *Labour Standards Act*. Cadillac Investments now bring this appeal by way of *certiorari* on the following grounds:

A. That the Labour Standards Board exceeded their jurisdiction in deciding that Tony Knezewich was an employee of the Applicant within the meaning of the *Labour Standards Act*.

B. That the Labour Standards Board abrogated its duty to afford the Applicant a fair hearing by giving the Applicant an opportunity to make oral submissions and to cross-examine witnesses for and against it.

At issue in the *certiorari* proceedings is whether Knezewich was at the material time employed in a managerial capacity by the Applicants, and therefore excluded from the benefits of Part I of the *Labour Standards Act*.

Part I of the Act (sections 4-11) deals with hours of work and includes requirements for overtime pay, days of rest and contains provisions for the calculation of overtime where general or statutory holidays are included in a work week. Subsection 2(2) however provides that:

Part I does not apply to or in respect of employees who are employed primarily in a managerial capacity.

The issue of managerial status is a jurisdictional question as the Act provides an alternative mechanism to an employee where the employee does not seek relief in the courts. The Board can only proceed to hear the matter of wages owing if this threshold question is decided in favour of the employee.

However, with respect to Knezewich's status, the Labour Standards Board merely stated that:

The Board carefully considered the Cadillac and Knezewich views and the questionnaires regarding employment status and has concluded that the claimant was, indeed an employee.

There is no indication of the meaning given to the word "employee" by the Board, nor any resolution of the conflicting evidence given by the parties on this issue. As a result of the Board's failure to articulate the principles on which they based

their decision the Applicants are prevented from exercising their right of appeal "on any point of law" under s.53(4) of the Act.

I find that when this issue came before the Labour Standards Board, the Applicants requested an opportunity to make oral submissions, albeit not in the clearest terms. This request was not addressed by the Board. The Board proceeded to decide that Knezewich was an employee of the Applicant despite the conflicting evidence of the parties in the material before them.

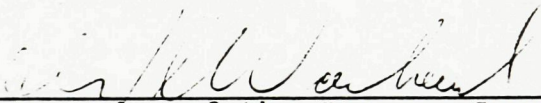
The decision of whether or not to afford the parties an oral hearing lies within the discretion of the Board. In *Ladner Transfer Ltd. v. Board of Industrial Relations* (1969), 69 W.W.R. 481 (B.C.C.A.), Robertson J.A. considered the requirement of an oral hearing under a statutory regime similar to the one in the present case. He was of the view that there ought to be an oral hearing in order for the parties to adequately present their positions before the tribunal. Similarly in the present case the parties should have been given an opportunity to make oral submissions where there was conflicting evidence on the central issue of Knezewich's managerial capacity.

The Act provides for an expeditious resolution of wage claims as an alternative to the parties going to court. However, it is no answer on the part of the Board to state that it did not have the resources or the time to deal with the present case by hearing oral submissions. The decision of the Board was in fact

far from expeditious as the hearing was held in September of 1991 yet the Board only handed down its decision in May of 1992.

In conclusion the failure of the Board to provide an opportunity for the parties to make oral submissions constituted a breach of natural justice and amounted to an error of jurisdiction.

The relief requested by the Applicant is for the quashing of the decision of the Labour Standards Board and that relief is hereby granted.


Deputy Judge of the Supreme Court
of the Northwest Territories

DATED at Edmonton, Alberta
this 1st day of December, 1993.

Counsel:

Austin F. Marshall, Esq.,
for the Applicant.

John Donihee, Esq.,
for Government of the
Northwest Territories.

CV 04263

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