

Date: 1998 08 19
Docket: CV 07168

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ANI PANILOO

Appellant

- and -

HAMLET OF TALOYOAK

Respondent

Statutory appeal on a point of law pursuant to subsection 53(4) of the *Labour Standards Act*, R.S.N.W.T. 1988, Ch.L-1, as amended. Appeal dismissed with costs.

Heard at Yellowknife (with telephone hook-up to Taloyoak) on August 18, 1998.

Reasons filed: August 19, 1998

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Appellant Ani Paniloo: (self-representation)
Counsel for the Respondent Hamlet of Taloyoak: Sarah Kay
Counsel for the Labour Standards Board: Earl Johnson, Q.C.

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ANI PANILOO

Appellant

- and -

HAMLET OF TALOYOAK

Respondent

REASONS FOR JUDGMENT

[1] The appellant is a former employee of the Hamlet of Taloyoak, having been employed as a Recreation Coordinator for approximately six months in 1994-95. In September 1995 she filed a claim for unpaid wages under the *Labour Standards Act*. In the within proceeding she appeals the decision of the Labour Standards Board.

[2] The legislature, in enacting the *Labour Standards Act*, R.S.N.W.T. 1988, Ch.L-1, established an informal and expedient mechanism whereby employer/employee disputes regarding unpaid wages could be resolved without the necessity of formal and expensive proceedings in a court of law. The statute contemplates that a Labour Standards Officer will investigate any complaint regarding unpaid wages and will certify whether wages are owing to a former employee. The statute also provides for a review of the decision of the Labour Standards Officer, if requested by either employer or employee, by a Labour Standards Board.

[3] The statute provides that a decision of the Labour Standards Board on such a review is final.

[4] However, the statute does state that the employer or employee has a limited right of appeal from the Board's decision on any legal point that was submitted to the Board

and on which it is alleged the Board made a mistake. Specifically, it is provided in subsection 53(4) of the Act as follows:

An appeal lies to a judge of the Supreme Court from the Board on any point of law raised before the Board under this section and the appeal must be lodged within 30 days after the date of the decision appealed from. (emphasis added)

[5] In the present case the appellant, in her original complaint to the Labour Standards Office in September 1995, made claims based on a) unpaid regular pay, b) unpaid overtime pay, c) unpaid vacation pay, d) inadequate notice of termination of employment, and e) discrimination. From the outset, the appellant was advised, correctly in my view, that the Labour Standards Office had no jurisdiction to deal with a complaint of discrimination.

[6] Both the Labour Standards Officer and the Labour Standards Board considered all of the facts and submissions that had been presented by the appellant and her former employer, and made decisions on each of items (a)-(d) above. The decision of the Labour Standards Officer was issued on November 20, 1996, and that of the Board on June 3, 1997.

[7] In her submissions to the Board and also on the present appeal in this Court, the appellant added further claims for relief, in particular, (f) written apologies from various individuals and (g) damages for pain and suffering. The Labour Standards Board has no jurisdiction to entertain these categories of claims, nor does this Court on this appeal.

[8] The only subject matter for the Labour Standards Board's consideration in this case is unpaid wages due to the appellant.

[9] There were no points of law raised before the Board. The Board considered the facts and circumstances of the appellant's employment with the hamlet, including the competing versions of the facts as presented by each of the appellant and the hamlet. The Board then made findings of fact, as it is entitled to do under the statute.

[10] The Board's findings of fact included:

- (1) that certain deductions from the appellant's final pay cheque were duly authorized by the appellant;

- (2) the employer had not properly paid the appellant for overtime hours worked;
- (3) the employer had not properly compensated the appellant for vacation pay;
- (4) the employer had given adequate notice of termination of employment in the circumstances.

[11] All of these findings of fact were open to the Board to make on the evidence before it. All of these findings were within the Board's jurisdiction or responsibility.

[12] It is not the role of this Court on this appeal to "retry" the competing versions of the facts, or to "take a second look" at the facts presented to the Board. The legislature has stated that the Board's decision on the facts is final. There is no right to appeal a finding of fact. See *Baffin Plumbing & Heating Ltd. v. Mitchell* [1994] N.W.T.J. No.41.

[13] Although the appellant purports to advance this appeal on a point of law, an examination of her written and oral submissions belies that assertion. In essence, those submissions are that the Board should have relied more heavily on her version of the facts and less on that of her former employer. She says that the Board failed to consider the contents of three sworn affidavits that she submitted, yet the Board's decision makes specific reference to those affidavits. The Board, of course, was not obliged to simply accept the truth of the contents of the affidavits. She now says that the Board should have made reference to certain other documents which may have been on her personnel file at the hamlet office, yet the record shows that the appellant was given ample opportunity to present whatever information and materials to the Board that she believed was pertinent, and that she did so.

[14] This appeal is not founded on any alleged error of law, or any point of law that was raised before the Board, and therefore must fail.

[15] This appeal, instead, is simply a request for a rehearing of a dispute over unpaid wages. The law, as written by the legislature, does not provide for a rehearing in this Court. This Court cannot create a right of appeal that does not exist by statute. See *Robinson v. Giant Yellowknife Mines* [1987] N.W.T.J. No.66.

[16] For these reasons, the appeal is dismissed. The employer shall be entitled to its costs of the appeal.

J.E. Richard,
J.S.C.

Dated at Yellowknife, NT,
this 19th day of August 1998.

Counsel for the Appellant Ani Paniloo: (self-representation)
Counsel for the Respondent Hamlet of Taloyoak: Sarah Kay
Counsel for the Labour Standards Board: Earl Johnson, Q.C.

IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES

BETWEEN:

ANI PANILOO

Appellant

- and -

HAMLET OF TALOYOAK

Respondent

REASONS FOR JUDGMENT OF
THE HONOURABLE JUSTICE J.E. RICHARD
