

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Bandyln Computer Services Inc.
("Computer Services")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Richard S. Longpre

FILE NO.: 96/480

DATE OF HEARING: December 18, 1996

DATE OF DECISION: January 3, 1997

DECISION

OVERVIEW

This decision addresses an appeal by Computer Services pursuant to Section 112 of the *Employment Standard Act* (the "Act"). Computer Services seeks review of Determination No. CDET 003474. The Determination found that Computer Services owed Robin Reece, a former employee, \$4,039.73 for unpaid wages and vacation pay.

Computer Services and Bandyman Training Society, while separate companies, are associated corporate entities pursuant to 95 of the *Act*.

During the hearing Computer Services and Reece agreed on the amount Computer Services owed Reece in specific areas of Reece's claim. Their agreement covered gross wages owing for the pay periods of June 14, 28 and July 12, 1996. Computer Services owed Reece \$2541.00, net \$1999.07. The parties also agreed that the outstanding vacation pay for these periods was \$446.50. Computer Services has paid Reece \$800.00. The total wages and vacation pay owing on these areas of Reece's complaint was net \$1645.57.

The Determination further found that Reece completed 12 consecutive months of employment with Computer Services when she terminated her employment. The Determination concluded that Computer Services owed Reece an additional two weeks wages and 4% vacation pay on those wages.

ISSUE TO BE DECIDED

Gross wages and vacation pay for the three pay periods in June and July 1996 are settled. The issue is whether Computer Services owes Reece an additional two weeks wages under Part 7 of the *Act*, Annual Vacation or under Part 8 of the *Act*, Termination of Employment.

FACT

Reece began employment with Computer Services in January 1995. In October 1995 she requested a leave of absence from her employment. From October 23 to December 3, 1995, Reece was away from work. She took another short leave of absence in early 1996 Reece terminated her employment with Computer Services in July 1996. She gave Computer Services no notice of her intention to leave.

ANALYSIS

Reece's potential entitlement to two weeks wages and vacation pay arises under two Parts of the *Act*. Under Part 8, an employee with 12 consecutive months of employment must be given two weeks notice of termination or two weeks wages. Reece voluntarily terminated her employment with Computer Services. Part 8 of the *Act* does not apply in those circumstances.

Part 7 of the *Act* sets out an employee's entitlement to annual vacation. Section 57(1) provides for two weeks vacation after 12 consecutive months of employment. An entitlement to a two week vacation is not an issue in this case. Reece took a number of weeks off work. Section 58(1)(a) sets out an employee's entitlement to vacation pay.

58. (1) An employer must pay an employee the following amount of vacation pay:
- (a) after 5 calendar days of employment, at least 4% of the employee's total wages during the year of employment entitling the employee to the vacation pay;

Computer Services agreed that it owed 4% of all wages earned. Vacation pay amounted to \$446.50

I am satisfied that Reece was not entitled to an additional two weeks wages with 4% vacation pay. Computer Services presently owes Reece \$2541.00 in unpaid wages and vacation pay: The net compensation owed is \$1645.57.

ORDER

Determination No. CDET 003474 is varied. Pursuant to Section 115 of the *Act* Computer Services is ordered to pay Reece \$2187.50, net \$1645.57, for unpaid wages and vacation pay.

Richard S. Longpre
Adjudicator
Employment Standards Tribunal,