

**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-

Siv Evinger

(“Evinger”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 96/573

**BC EST # D027/97**

**DATE OF DECISION:** January 24th, 1997

## DECISION

### OVERVIEW

This is an appeal brought by Siv Evinger (“Evinger”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 003902 issued by the Director of Employment Standards (the “Director”) on September 10th, 1996. The Director determined that the Danish Trade Office (the “employer”) contravened the *Act* by failing to ensure that Ms. Evinger took her full annual vacation (she did take 13 of the 15 vacation days to which she was apparently entitled under her employment contract) during the calendar year 1995. The Director also determined that the employer did *not* owe Ms. Evinger any vacation pay.

### FACTS

According to the information set out in her initial complaint filed with the Employment Standards Branch, Evinger worked as a secretary/receptionist for the Danish Trade Office from April 1st, 1992 until March 29th, 1996. Evinger was given three months’ working notice of termination on or about December 22nd, 1995. She continued to work until March 29th, 1996 when she was sent home and told she need not return; her salary was continued until March 31st, 1996.

The basis of initial complaint, and the present appeal, is that during the calendar year 1995 she only took 13 of the 15 vacation days (*i.e.*, three weeks) to which she was entitled. She now claims that she is entitled to an additional two days’ pay and this is the basis of her appeal. Her initial complaint stated: “I have 3 weeks holiday equal 15 days. During 1995 I took out only 13 days and now my employer refuse to pay out the 2 days owing in cash”. (sic)

### ISSUE TO BE DECIDED

Is Evinger entitled to an additional two days’ vacation pay?

### ANALYSIS

Evinger commenced her employment on April 1st, 1992. Accordingly, by March 31st, 1995 (having then completed three consecutive years of employment) she was only entitled, under the Act, to two weeks annual paid vacation (*i.e.*, 10 “working” days) for the following year (April 1st, 1995 to March 31st, 1996) even though her employer may have contractually agreed to provide 15 “working days” of paid vacation time [see s. 36(1) of the former *Act* and section 57(1) of the current *Act*]. Evinger would not have been eligible for three weeks’ paid vacation (*i.e.*, 15 “working days”) under the *Act* until she completed five consecutive years of employment.

In light of the foregoing, Ms. Evinger does not have any entitlement under the *Act* for the two additional paid vacation days she now claims; indeed, it would appear that the employer provided more paid vacation time than it was legally obliged to do, at least insofar as the *Employment Standards Act* is concerned.

I might add that although the employer has not appealed the Determination, based on my view of the matter, it would follow that I do not agree with the Director’s determination that the employer violated section 57(2) of the *Act*.

## **ORDER**

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 003902 be confirmed as issued.

---

**Kenneth Wm. Thornicroft, *Adjudicator***  
**Employment Standards Tribunal**