

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113

- by -

JB's Bagatelle Ltd

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** John M. Orr

**FILE No:** 98/753

**DATE OF DECISION:** February 2, 1999

## DECISION

### OVERVIEW

This is an appeal by JB's Bagatelle Ltd ("Bagatelle") pursuant to Section 112 of the *Employment Standards Act* (the "Act") from a Determination (File No. 90083) dated November 10, 1998 by the Director of Employment Standards (the "Director").

The complainant, Jennifer Simpson ("Simpson") was employed by the business operated by Bagatelle for 3.5 years. In June 1998 Bagatelle was in financial difficulty and decided to hire a new employee under a government program in which the new employee's wages would be subsidised by the government. The shifts and hours of existing employees were to be reduced and replaced by the subsidised employee. Ms Simpson's shifts were cut by 50%. She decided that this amounted to a substantial change in her conditions of employment and she resigned. She made a complaint to the Director claiming compensation for length of employment.

The Director determined under section 66 of the *Act* that her employment had been terminated by the substantial reduction in hours and that therefore she was entitled to compensation. Bagatelle appeals on the grounds that the reduction in hours was not permanent and that they had been told by the government agency involved that it was permissible to reduce employees' hours to accommodate the new employee. Bagatelle also includes in the appeal derogatory comments about Ms Simpson and another employee indicating that they could have been terminated for cause anyway.

### ISSUE TO BE DECIDED

The issue to be decided in this case is whether the reduction in hours amounted to a substantial alteration in Ms Simpson's conditions of employment. Included in the consideration of this issue is the effect, if any, of the advice given to Bagatelle by the government employment agency.

### FACTS

According to Bagatelle, in early summer 1998 the business was "going broke and trying every means not to". At a staff meeting on June 09, 1998 Bagatelle advised their employees that they were planning to bring in a new employee under a government sponsored wage cost sharing incentive program called the "Business Works Program". Existing employees were advised that their hours would be reduced to accommodate the new subsidised employee.

Ms Simpson had worked for the business for 3.5 years and, at the time, was a part-time employee working, on average, 25.84 hours per week. Bagatelle told her her hours were to be reduced by

approximately 50%. She also claims that Bagatelle said that they would be hiring a second subsidised employee as well. Her hours were reduced to 12.5 hours initially and then to 14.75 hours.

Bagatelle alleges that they were told by the Business Works Program staff that they could reduce the hours of existing employees to accommodate the new employee. Bagatelle has not provided any evidence to confirm this advice from the Business Works Program. Ms Simpson has submitted a letter from the Program stating that it is their policy that they are not allowed to displace existing employees in placing one of their clients in an employment situation.

## ANALYSIS

Section 63 of *Act* provides the basic premise that employees are entitled to compensation for length of service unless given notice or the employee terminates the employment, retires or is dismissed for just cause. In this case the employee was not given notice of termination, did not retire, and was not dismissed for just cause. Despite the derogatory comments made by Bagatelle in the appeal there were no grounds presented to the Director or to this Tribunal that would justify dismissal. There remains the issue as to whether the employer or Ms Simpson terminated the employment.

Section 66 of the *Act* provides that if a condition of employment is substantially altered, the director may determine that the employment of an employee has been terminated. Condition of employment is specifically defined in the *Act* as follows:

**"conditions of employment"** means all matters and circumstances that in any way affect the employment relationship of employers and employees.

This Tribunal has held previously that hours of work are "conditions of employment" - *Exmac Foods Ltd*, BC EST #D302/96; *Ballendine*, BC EST #D037/97; *Victor Carpet Distributors Ltd*, BC EST #D116/98. I agree, but not all changes in the hours of work of an employee would amount to grounds for the director to determine that the employment has been terminated. The alteration must be "substantial". In this case the reduction in hours for an employee of 3.5 years seniority by approximately 50% is substantial even considering that the employee was only a part-time employee. In fact, the reduction in hours may even be more significant for a part-time employee.

Bagatelle relies on some advice allegedly given to them by the government agency running the employment incentive program. I do not accept this argument and do not find it credible. The Business Works program is intended to create new employment for underemployed individuals not to replace existing employees with subsidised workers. In any case this Tribunal must apply the legislation as it is written and not as might be interpreted by some other agency.

In conclusion I find that the Director made no error in law or fact in coming to the determination that the conditions of employment of Ms Simpson were substantially altered when her hours were

reduced to accommodate the new subsidised employee and that her employment was thereby terminated by the employer. Under those circumstances she is entitled to compensation for length of service. I confirm the Determination as issued.

**ORDER**

I order, under Section 115 of the *Act*, that the Determination is confirmed.

**John M. Orr**  
**Adjudicator**  
**Employment Standards Tribunal**