Employment Standards TRIBUNAL

An appeal

- by -

Reel Appetites (1992) Ltd.
("Reel Appetites" or "Employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

ADJUDICATOR: Paul E. Love

FILE No.: 2002/622

DATE OF DECISION: February 26, 2003

DECISION

OVERVIEW

This is an appeal by an employer, Reel Appetites (1992) Ltd. ("Reel Appetites" or "Employer"), from a Determination dated November 21, 2002 (the "Determination") issued by a Delegate of the Director of Employment Standards ("Delegate") pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113* (the "*Act*"). The employee, Cherie Summers (the "Employee") was terminated by the Employer, and paid compensation for length of service. The Employee filed a complaint claiming all her entitlement, as she had worked at the North Shore Winter Club, for more than 8 years, for different employers. The Employer's initial view, during the investigation, was that the Employee was paid her full entitlement of one week's wages for compensation for length of service. Later, without providing documents or information supporting a just cause dismissal, the Employer took the position that the Employee was dismissed for just cause. The Delegate found that the Employee who worked continuously at the premises of the North Shore Winter Club, and employed by the Employer at the time of the termination, was entitled to compensation for length of service based on the continuous term of employment, albeit she had worked with employers at the North Shore Winter Club, other than Reel Appetites . The Delegate applied section 97 of the *Act*, and found an entitlement to 8 weeks for compensation for length of service, plus vacation pay. The Employer seeks to appeal the findings, alleging the Employee was dismissed for just cause. I dismissed the appeal as a frivolous appeal, as the Employer provided no satisfactory submission, or evidentiary basis for me to review the Determination.

ISSUE:

Did the Delegate err in finding that the employee was entitled to compensation for length of service.

FACTS

I decided this case after considering the Determination and attachments, the written appeal form of the Employer, submissions of the Employer and the submission of Delegate. The Employee did not file an appeal submission.

Cherie Summers was employed as a bartender/waitress at the North Shore Winter Club ("NWSC") from January of 1992 until November 4, 2001. The Employer terminated her. At the time of the termination the Employer paid Ms. Summers the sum of $392.59, which represented one week's severance pay. The Employee filed a complaint, claiming all her severance pay. The initial position of the Employer at the time of the investigation was that Ms. Summers had been paid all the monies that she was entitled to for compensation for length of service, based on her service with the Employer. The Employer argued that the previous employer, Beaver Foods, had not provided any payroll documents to the Employer. Part way through the investigation the Delegate was advised to deal with Vern Fox. The Delegate contacted Mr. Fox and was provided no further information. Just prior to the issuance of the Determination, the Delegate contacted a director of the Employer, Paul Crepeau, who advised Ms. Summers had been terminated with cause. The Employer has never provided the Delegate with any information related to cause.

The Delegate found that the Employer had not established that Ms. Summers was terminated for cause. The Delegate found that Ms. Summers was entitled to compensation for length of service. The Delegate considered and applied section 97 of the *Act*, and concluded that Ms. Summers' employment was continuous and uninterrupted. The Delegate assessed compensation for length of service based on the entire employment relationship, and awarded compensation for length of service based in the amount of 8 weeks wages.

The Delegate found that Ms. Summers was entitled to the sum of $3,772.58 consisting of compensation for length of service in the amount of $2,808.53, annual vacation pay in the amount of $804.06 and interest in the amount of $159.99. The Delegate found that the Employer had contravened section 58(1) and 63(2) of the *Act*, and ordered the Employer to cease contravening the *Act*.

Employer's Argument:

The Employer provided an appeal form which indicates that the Employer wishes the matter sent back for further investigation. The extent of the appeal submission is noted under the grounds of appeal and the full text of it reads as follows:

> We need to have North Shore Winter Club confirm our position that Summers was dismissed with cause.
>
> ...

The Employer sought a suspension of the Determination with the following comment:

> Yes Reel Appetites discontinue its association with NSWC in March 2002. We are required to have a letter from the Club confirming they dismissed an employee at the same time as Reel Appetites did Summers. This will confirm just cause.

The only further information filed by the Employer, with the Tribunal was a letter dated January 9, 2003 attaching a record of employment noting Ms. Summers was dismissed. The letter also noted:

> We are having staff and former staff familiar with the cause for dismissal have Statutory Declarations completed and will submit when completed.

The Employer filed no further submission, and no documents in support of his appeal.

Delegate's Argument:

The Delegate says that the Employer provided no evidence during the course of the investigation relating to a just cause defence and submits that the Employer should not be permitted to raise this on appeal. The Delegate submits that the appeal should be dismissed.

ANALYSIS

In an appeal under the *Act*, the burden rests with the appellant, in this case, the Employer, to show that there is an error in the Determination, such that the Determination should be canceled or varied.

I note that the Employer did not provide any information to the Delegate during the course of the investigation related to its defence of just cause. If an appellant wishes the Tribunal to deal with an issue on appeal, it must participate in the investigation and provide information and documents to the Delegate. This did not occur and, in any event, the Employer has provided no satisfactory evidentiary basis for me to consider an argument relating to a dismissal for just cause. I do not consider a record of employment a sufficient basis for me to find "just cause" for the termination of an employee. That is in effect the only information provided on appeal by the Employer.

It is incumbent on an appellant to raise an issue on appeal, together with some material supporting the appeal, which the Tribunal must consider. The material provided by the appellant is so brief and bereft of information and particulars of error alleged to be made by the Delegate that, in my view, there is nothing before the Tribunal to consider. This appeal must be dismissed as a frivolous appeal, pursuant to section 114(1)(c) of the *Act*.

ORDER

Pursuant to s. 115 of the *Act* the Determination dated November 21, 2002 is confirmed.

Paul E. Love
Adjudicator
Employment Standards Tribunal